TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 263

ST. LOUIS & SOUTHWESTERN RAILWAY COMPANY, APPELLANT,

vs.

J. H. NATTIN, TAX COLLECTOR, CONSOLIDATED ROAD DISTRICT OF THE PARISH OF BOSSIER, LOUISIANA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA

FILED MAY 23, 1927

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[fol. 1]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA

No. 278

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,

versus

J. H. NATTIN, Tax Collector, Consolidated Road District of the Parish of Bossier, Louisiana

BILL OF COMPLAINT AND ORDER TO SHOW CAUSE—Filed January 3, 1927

To the Honorable Ben C. Dawkins, Judge of the United States District Court for the Western District of Louisiana:

The complainant, St. Louis Southwestern Railway Company, respectfully shows that it is now and was at all times hereinafter mentioned, a railway corporation organized under the laws of the State of Missouri, and brings this, its bill of complaint, against J. H. Nattin, Tax Collector in and for the Parish of Bossier, Louisiana, and also against the Consolidated Road District of the Parish of Bossier, Louisiana, whereof J. G. McDade is President and who is a resident of Bossier Parish, Louisiana, all within the Western District of Louisiana, and thereupon your complainant shows:

1

That it owns and operates a railway line through the States of Missouri, Arkansas and Louisiana and operates a branch line of its railroad from Lewisville, Arkansas to Shreveport, Louisiana, a large portion of which branch line runs through and is in the Parish of Bossier, said State, and embraced in said Consolidated Road District of the Parish of Bossier, Louisiana.

2

Complainant further states that this controversy is a suit of a civil nature between citizens of different states

and that the amount in controversy exceeds the value of Three Thousand Dollars ($3,000.00) exclusive of interest.

3

That the Consolidated Road District of Bossier Parish, Louisiana, was attempted to be created under Act 148 of the General Assembly of the State of Louisiana for the [fol. 2] year 1921 and claims to be a body politic, incorporated in the Parish of Bossier, State of Louisiana and a citizen and inhabitant of said Parish and State during all of the time hereinafter mentioned, with its principal office in said District in the Town of Benton, Bossier Parish, Louisiana, and within the Western District of Louisiana.

4

That under a pretended ordinance of the Police Jury of Bossier Parish, creating said Consolidated Road District, the Police Jury of said Parish, composed of J. G. McDade, Chairman and R. C. Purcell, R. E. McDade, S. E. Mays, W. B. Wilbourn and L. M. Burke, Jurors, constitute the Board of Control of said Consolidated Road District of Bossier Parish, Louisiana.

5

Your complainant shows that the territory embraced in said attempted and pretended road district includes practically all of the territory within the Parish of Bossier and pretends to be a consolidation of three existing road districts, with the addition of additional territory and only excludes from said district small strips or portions of land as indicated on a map thereof, which is hereto attached and made part hereof.

6

Your complainant further shows that the said Consolidated Road District, through its Commissioners, as aforesaid, have formed plans for the improvement contemplated thereby, which plans include the construction of a number of miles of hard surface or gravel roads in said District, the estimated cost of which amounts to One Million, Six Hundred and Thirty Thousand Dollars ($1,630,000.00), less

One Hundred and Fifty-seven Thousand Dollars ($157,000.00) for original Road District No. 2, and Forty-two Thousand, Five Hundred Dollars ($42,500.00) for original Road District No. 3, and in pursuance of said plan, in order to raise the necessary money for said contemplated improvement, the said District has issued bonds in the sum of One Million, Three hundred, Eighty-nine Thousand, Five Hundred Dollars ($1,389,500.00) and in order to meet [fol. 3] the annual interest on said bonds and to pay said bonds when they mature, have levied a tax or special assessment against the property of your complainant in said District of seven mills (7) for the year 1926.

7

That the said special assessment so levied against the property of your complainant in said Road District for the year 1926 amounts to the sum of Seven Thousand and Three and 08/100 ($7,003.08) Dollars and J. H. Nattin, Tax Collector of Bossier Parish, charged with the collection of the taxes due said Consolidated Road District under the laws and statutes of the State of Louisiana is demanding of your complainant the payment of said taxes so claimed by said Consolidated Road District of Bossier Parish, as aforesaid.

8

That the various roads proposed to be graveled or hard surfaced by the said Consolidated Road District in said Parish, extend in various directions, but one of them runs parallel with the railway line of your petitioner from Bossier City in the State of Louisiana, by way of Benton, to Arkana, Louisiana.

9

Your complainant further shows that it is the owner of all of the capital stock of the Shreveport Bridge & Terminal Co., a corporation organized under the laws of the State of Louisiana, with its domicile at Shreveport in the State of Louisiana, and to all intents and purposes it is the owner of said Shreveport Bridge & Terminal Company, which owns a bridge across Red River at Bossier City in the Parish of Bossier, extending to the Caddo Parish side

of said river and that it has an operating contract with said Shreveport Bridge & Terminal Company, under which and by which it contracts and agrees to pay all deficits which may occur in the operation of said Shreveport Bridge & Terminal Company, a copy of which contract is attached hereto and made part hereof.

10

That as the owner of all of the capital stock of the said [fol. 4] Shreveport Bridge & Terminal Company and under said contract for the operation of its said bridge your complainant is bound and obligated and does pay all of the taxes assessed against said Shreveport Bridge & Terminal Company in the State of Louisiana.

11

That in said Consolidated Road District there is assessed against said Shreveport Bridge & Terminal Company a tax in the sum of One Thousand, Ninety-two and 49 100 ($1,092.49) Dollars, for the year 1926 for the purpose of paying the principal of the bonds maturing in said year and interest on said bonds as hereinafter set forth, and your complainant on account of its obligation to pay the taxes on said Shreveport Bridge & Terminal Company property, as aforesaid, within the said Road District also brings this suit for and on its behalf and also seeks to restrain the collection of said road tax as against said Shreveport Bridge & Terminal Company for the reasons hereinafter set forth.

12

Your complainant now avers that the assessment of its property and that of the Shreveport Bridge & Terminal Company in said Consolidated Road District for any taxes whatsoever is illegal, void and in violation not only of the Constitution and laws of the State of Louisiana, but in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, for the following reasons, to-wit:

First. That the creation of said Consolidated Road District is made in violation of the Constitution and laws of

the State of Louisiana, in that it embraces the entire Parish of Bossier with but slight exception, which exceptions your complainant charges are but a pretense and a sham, made for the purpose of evading Article 14, Section 14 of the Constitution of said State of Louisiana, which prohibits the creation of a road district which shall comprise the whole territory of a Parish.

Second. That the said seven (7) mill tax levied by the said Consolidated Road District for the year 1926, contains, [fol. 5] as your complainant is advised and believes and therefore avers two mills for the purpose of paying the interest on said bonded indebtedness for the year 1927, in violation of said Act 118 of 1921 and in violation of the Constitution of the State of Louisiana, which prohibits the levy of a tax in any year more than is necessary for the payment of the interest and principal of the bonds due in such year, and that the only tax necessary to be levied for the year 1926 for the payment of said interest and bonds due said year is five mills on the dollar and that the inclusion of said extra two mills for the year 1926 in order to pay the interest on said bonds for the year 1927 is illegal, null and void.

13

Your complainant shows that by said system of improvement in said Parish and the construction of said gravel or surfaced roads, that the market or physical value of its property and that of the Shreveport Bridge & Terminal Company, located in said District will not be increased and will not be benefited in any amount whatsoever by the construction and maintenance of said roads as proposed and the effort to tax its property or that of the said Shreveport Bridge & Terminal Company for the purpose of paying the cost of constructing such road or the maintenance thereof is without any benefit or value to either it or the said Shreveport Bridge & Terminal Company and amounts to taking their property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. That said roads will not now or ever be of any benefit to complainant or said Shreveport Bridge & Terminal Company, but will always be injurious to them in that such roads will furnish the means or

routes for trucks, automobiles and other similar vehicles operating without charge or tolls imposed on them, to carry freight and passengers in competition with complainant and said Bridge Company and to their manifest injury and damage.

14

Your complainant further shows that its property in said [fol. 6] Consolidated Road District is assessed at the sum of One Million Four Hundred and Forty Dollars ($1,000,440,00) and that of the Shreveport Bridge & Terminal Company is assessed at the sum of One Hundred, Fifty-six Thousand and Seventy Dollars ($156,070,00), and that such assessment of its property and that of said Bridge & Terminal Company is exorbitant, arbitrary and unlawful, for the reason that neither of them will receive any benefit whatever from the construction and maintenance of their said roads and for the further reason that the assessment of their respective properties in said District for the purpose of paying the said bonds and interest thereon is at its practical cash value, whereas the farm lands and other property in said district is assessed at a much lower rate and thereby, in any event, discriminates against your complainant and the said Shreveport Bridge & Terminal Company and deprives them of their property without due process of law, in violation of the said Fourteenth Amendment to the Constitution of the United States. That said assessment and levy of their said properties in said road district is arbitrary and discriminatory as compared with the assessment made by the said road district upon other property within said district, thereby imposing upon *upon* complainant and the said Shreveport Bridge & Terminal Company a grossly unequal and disproportionate share of the cost of said improvement, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

15

Complainant further shows that all of its property located within said Consolidated Road District is an integral part of an interstate transportation line and that all of the same is used constantly in the transportation of interstate commerce, and that the property of the said Shreveport Bridge

& Terminal Company is likewise so used and that said assessment so made by the said Commissioners of said Road District, unlawfully burdens such interstate commerce by imposing upon the revenues accruing therefrom an unlawful, unjust and discriminatory tax in violation of Sec-
[fol. 7] tion 6, Article 1 of the Constitution of the United States providing for the regulation of commerce between the States.

16

Your complainant further shows that instead of the said proposed improvements to be made by said Road District being a benefit to its or the Shreveport Bridge & Terminal Company's property within said District, such improvements have resulted and will result in great damage to their property and render the same less productive in that the said gravel or hard surface road to be constructed parallel with its said line of railway will be used by trucks or other means of conveyance in competition with your complainant and will decrease the amount of the traffic moving on its said line throughout the entire length of said road district between Arkana, Louisiana and Bossier City, Louisiana, and that the said injury to its said property will be material and substantial, and to require it or the said Shreveport Bridge & Terminal Company to contribute to the construction of what in fact amounts to a competing transportation system is in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and deprives it of its property without due process of law, and divests it of its vested rights.

17

Your complainant further shows that the said Act of the Legislature of the State of Louisiana, authorizing the creation of said Road Districts, makes no provision whatsoever for a hearing at any time or place by any taxpayer affecting the validity or amount of taxes to be assessed against property located within such road district and, therefore, your complainant and the said Shreveport Bridge & Terminal Company were deprived of any hearing before any Board or persons whatsoever as to whether said tax so levied in aid of the construction and maintenance of said

road would be of any benefit whatever to them, thus depriving them of their property without due process of law, in violation of the Constitution of the United States and par-
[fol. 8] ticularly the Fourteenth Amendment thereto.

18

Your complainant further shows that it, for itself and on behalf of the said Shreveport Bridge & Terminal Company, has tendered to J. H. Nattin, Tax Collector for said District all of the other taxes assessed against their said property located within said district and has offered to pay him all of the said lawful taxes assessed against their respective property, but he declines and refuses to accept the same, unless your complainant also pays the amount of taxes levied by the said Consolidated Road District as aforesaid and threatens that unless your complainant and the said Shreveport Bridge & Terminal Company pays such Consolidated Road District tax as aforesaid, to advertise for sale their respective properties located in said District, for the payment of said taxes so illegally assessed against their said property.

19

Your complainant further shows that the said J. H. Nattin, Sheriff & Tax Collector of Bossier Parish, and Ex-Officio Tax Collector of said Road District, will proceed to advertise for sale the properties belonging to your said complainant and the said Shreveport Bridge & Terminal Company for the payment of said illegal taxes so levi*ed* by said Consolidated Road District, unless restrained by your writs of injunction and in as much as under the laws of the State of Louisiana taxes become delinquent on the 31st day of December of each year, will proceed to advertise and sell their said properties for said illegal taxes in the meantime until a hearing can be had hereof, unless restrained by a restraining order from this Honorable Court and that the said Consolidated Road District, through its said President, J. G. McDade, will attempt to collect said taxes unless restrained by said restraining order and by a temporary writ of injunction herein, which should issue to your complainant on its making bond as required by law.

[fol. 9] 20

Your complainant further shows that for the reasons and things hereinbefore set forth, the said Consolidated Road District of Bossier Parish never attained any corporate existence or acquired any rights to levy taxes or perform any act whatever, because created so as to include the entire Parish, in violation of the Constitution and laws of Louisiana and its attempted creation was utterly null and without any legal effect. But even if legally organized, then in the alternative it shows its attempt to levy any tax or assessment on or against its property or that of the Shreveport Bridge & Terminal Company in said road district is null and illegal for the reasons herein stated and violative of the Fourteenth Amendment and Article 6 of the Constitution of the United States. But further in the alternative, it shows even if such district was legally organized and even if such property of complainant and the Shreveport Bridge & Terminal Company may be subjected to said special tax or assessment, then in any event it shows said road district is without right or authority to levy and collect for the year 1926 two (2) mills of said seven (7) mills levy to pay the interest on the said bonded debt for the year 1927, and to that extent if no other, said levy of said special tax is void.

21

Complainant shows that said illegal tax or assessment in said road district, of its property and that of the Shreveport Bridge & Terminal Company, will continue annually to and including the year 1965 and for each year said road district will illegally assess their property therein and collect thereon for each year not less than five mills on the dollar of its assessed valuation, aggregating for each of them more than fifty thousand dollars.

The premises considered, your complainant prays that the defendants, J. H. Nattin, Tax Collector, and the Consolidated Road District of Bossier Parish, Louisiana, through its President, J. G. McDade, be summoned as provided by law and that they be required to answer hereto [fol. 10] and that a temporary restraining order be granted

to your complainant restraining the said Tax Collector and the said Road District from levying, assessing or attempting to collect the said road taxes for the year 1926, based upon the assessment against its property and that of the said Shreveport Bridge & Terminal Company in said District and upon a final hearing thereon, that the action of said Road District in making the assessment against its property and that of the Shreveport Bridge & Terminal Company, within said District be declared illegal and void and that such assessment be set aside as in violation of due process of law, or for the reasons hereinbefore set forth, and that a writ of injunction issue directed to the said J. H. Nattin, Tax Collector and to the said Consolidated Road District of Bossier Parish, Louisiana, enjoining and restraining them and each of them from levying or assessing any special tax or assessment against the property of your complainant and that of the Shreveport Bridge & Terminal Company and for such other general relief as the complainant may, in good conscience be entitled to under the foregoing facts and law and for all of which it shall ever pray.

J. R. Turney, Wilkinson, Lewis & Wilkinson, Solicitors for Complainant.

Duly sworn to by J. D. Wilkinson. Jurat omitted in printing.

[fol. 11] Order to Show Cause

On considering the above and foregoing bill of complaint and by reason of the law, it is ordered that J. H. Nattin, Sheriff & Tax Collector for the Parish of Bossier and the Consolidated Road District of Bossier Parish, Louisiana, through its President, J. G. McDade, show cause at New Orleans, La. January 13th, 1927, at 11:00 O'clock A. M. why they should not be enjoined from collecting or attempting to collect the said road tax as set forth in said bill of complaint or from advertising for sale, or attempting to sell the property of the complainant or the Shreveport Bridge & Terminal Company for the payment of said tax,

said hearing to be before and by Circuit Judge Rufus E. Foster and District Judges Dawkins and Burns.

Done and signed on this the 31st day of December, 1926.

(Signed) Ben C. Dawkins, Judge.

[File endorsement omitted.]

Exhibit to Bill of Complaint—Filed January 3, 1927

This agreement, made and entered into this first day of January, 1925, between Shreveport Bridge & Terminal Company, herein called "Lessor," first party, and St. Louis Southwestern Railway Company, herein called "Lessee," second party, Witnesseth:

1. In consideration of the Lessee's covenants, Lessor grants the joint use of its entire railroad and bridge facilities, wherever located, subject to Lessor's exclusive control, but in common with such other joint users as Lessors may permit to participate therein, for a term of one year and thereafter from year to year until cancelled by either party upon thirty days' notice prior to the beginning of any yearly term, of its desire to terminate the same.

[fol. 12] 2. In consideration whereof, Lessee covenants and agrees that it will, and its successors and assigns shall

2. 1. Pay Lessor on the first day of January in each year during the term hereof, an amount of money representing the difference by which the Lessor's total gross expenditures during the preceding year for all purposes whatsoever shall exceed the total gross income received from all sources whatsoever, of said Lessor, during such preceding calendar year.

2. 2. Indemnify the Lessor against all liability for damages, including injuries to persons and property, deaths and expenses incident thereto, arising during or by reason of the construction, use, abandonment, operation or maintenance of the facilities of the Lessor by the Lessee, however, the same may be occasioned.

In testimony whereof, the parties hereto have hereunto set their hands and seals on the day and year first above written.

Shreveport Bridge & Terminal Company, by (Sd.) Daniel Upthregrove. Attest: (Sd.) Charlton Messick, Secretary. St. Louis Southwestern Railway Company, by (Sd.) F. W. Green. Attest: (Sd.) Charlton Messick, Asst. Sec'y.

Form approved: (Sd.) J. P. Turney, General Solicitor.

[File endorsement omitted.]

(Here follows Exhibit to Bill of Complaint, marked side folio page 13.)

[fol. 14] IN UNITED STATES DISTRICT COURT

AMENDED COMPLAINT AND ORDER FILING SAME—Filed January 19, 1927

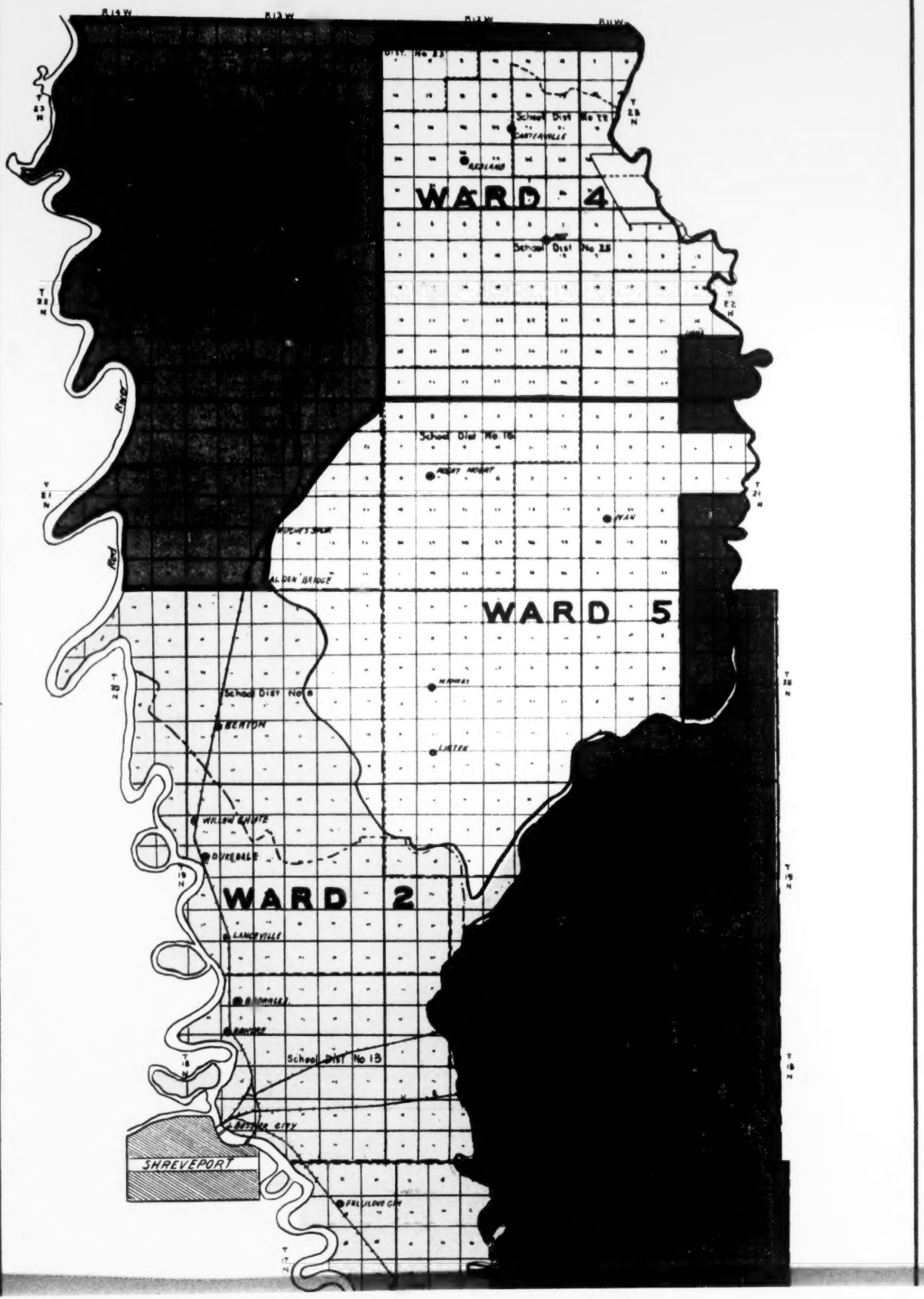
1

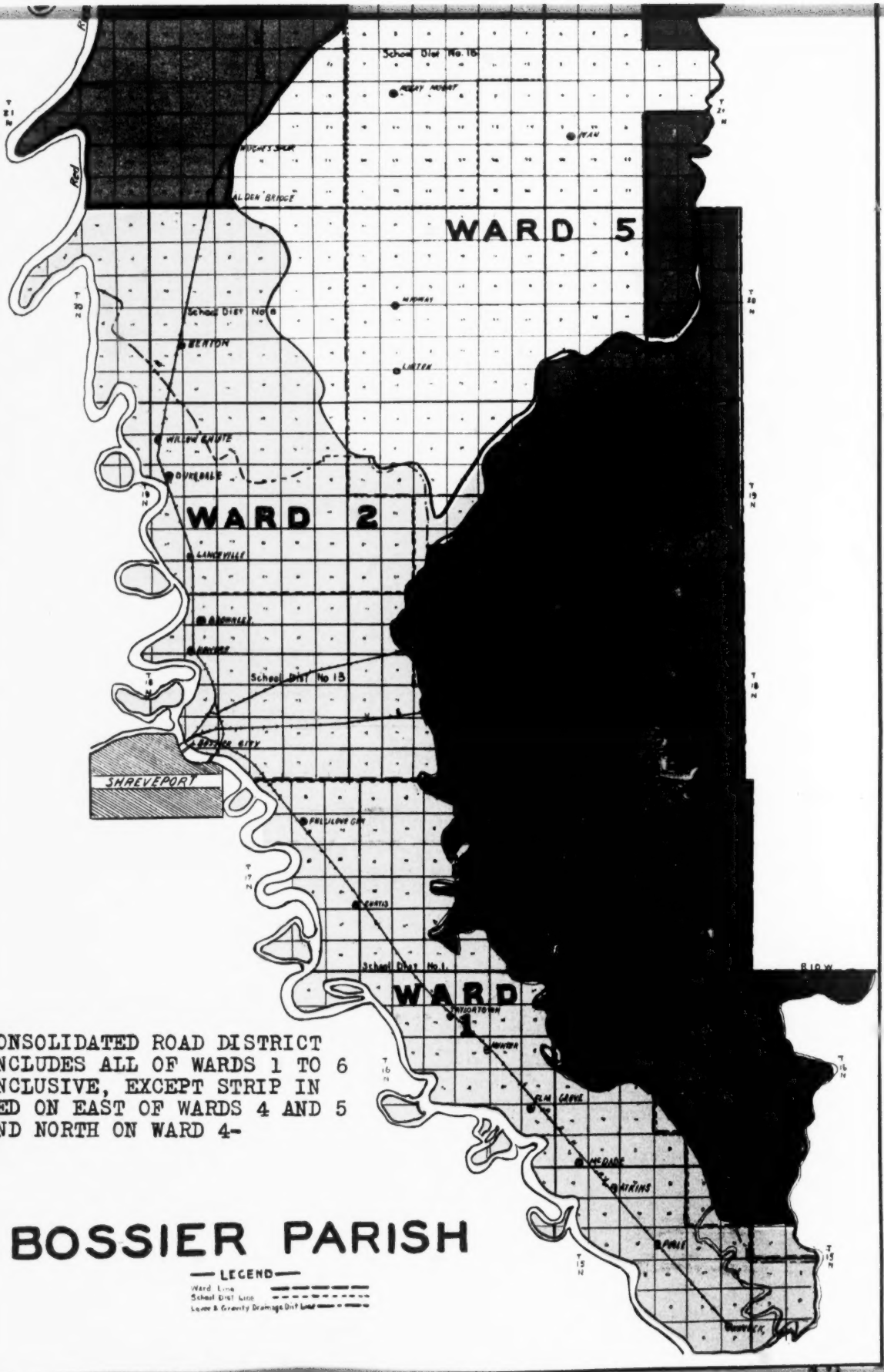
Now comes the complainant in the above entitled and numbered cause, the St. Louis Southwestern Railway Company, and adopting all of the allegations and the facts in its original complaint herein filed, shows unto the Court that certain clerical errors were made in the writing of Paragraphs 15 and 20 of its original complaint and it, therefore, begs leave of the Court to amend the said paragraphs so as to read as follows:

15

Complainant further shows that all of its property located within said Consolidated Road District is an integral part of an interstate transportation line and that all of the same is used constantly in the transportation of interstate commerce, and that the property of the said Shreveport Bridge & Terminal Company is likewise so used and

EXHIBIT TO BILL OF COMPLAINT




School Dist No. 16
WARD 5
School Dist No 6
BENTON
WILLOW CHUTE
WARD 2
School Dist No 13
SHREVEPORT
School Dist No 1
WARD
CONSOLIDATED ROAD DISTRICT
INCLUDES ALL OF WARDS 1 TO 6
INCLUSIVE, EXCEPT STRIP IN
RED ON EAST OF WARDS 4 AND 5
AND NORTH ON WARD 4-
BOSSIER PARISH
LEGEND
Ward Line
School Dist Line
Levee & Gravity Drainage Dist Line

that said assessment so made by the said Commissioners of said Road District unlawfully burdens such interstate commerce by imposing upon the revenues accruing therefrom an unlawful, unjust and discriminatory tax in violation of Section 8, Article 1 of the Constitution of the United States providing for the regulation of commerce between the states, and denies petitioner equal protection of the laws guaranteed by the 14th Amendment to the U. S. Constitution.

20

Your complainant further shows that for the reason and things hereinbefore set forth, the said Consolidated Road District of Bossier Parish never attained any corporate existence or acquired any rights to levy taxes or perform any act whatever, because created so as to include the entire Parish, in violation of the Constitution and laws of Louisiana and its attempted creation was utterly null and without any legal effect. But even if legally organized, then in the alternative it shows its attempt to levy any tax or assessment on or against its property or that of the Shreveport Bridge & Terminal Company in said Road District is null and illegal for the reasons herein stated, [fol. 15] and violative of the Fourteenth Amendment and Article 1, Section 8, of the Constitution of the United States. But further in the alternative, it shows even if such district was legally organized and even if such property of complainant and the Shreveport Bridge & Terminal Company may be subjected to said special tax or assessment, then in any event it shows said Road District is without right or authority to levy and collect for the year 1926 two (2) mills of said seven (7) mills levy to pay the interest on the said bonded debt for the year 1927, and to that extent, if no other, said levy of said special tax is void.

II

That it desires to amplify and amend paragraph 8 of its original complaint to read as follows:

8

That the various roads proposed to be graveled or hard surfaced by said Consolidated Road District in said Parish

extend in various directions, many of said roads converging at the Bossier City traffic bridge leading into the City of Shreveport where other railroads and motor bus lines compete with complainant in freight and passenger traffic business.

That one of said roads to be improved in said District runs parallel with the railway line of petitioner from Bossier City, Louisiana, by way of Benton to Arkana, Louisiana.

III

That it desires to amplify and amend paragraph 10 of its original complaint to read as follows:

10

That as the owner of all of the capital stock of the said Shreveport Bridge and Terminal Company complainant is virtually the owner of the property of said Company, and under said contract for the operation of its said bridge your complainant is bound and obligated to pay and has always paid all taxes assessed against the said Shreveport Bridge and Terminal Company in the State of Louisiana. [fol. 16] That the practical effect of said agreement has always been to require complainant to pay said taxes, and the said Bridge Company therefore is not a real party in interest as to this proceeding.

That complainant has been fully authorized to represent whatever interest said Bridge Company may have in this proceeding, and to sue in its behalf therefor, and has fully subrogated complainant to its rights and obligations in all taxes due and payable in the State of Louisiana.

Premises considered, your complainant prays that this supplemental and amended complaint be filed and allowed, and that a writ of injunction issue herein, as prayed for in the original bill of complaint herein filed; for all orders and decrees necessary, for full, general and equitable relief which the complainant may, in good conscience, be entitled to under the facts and the law, and for all of which it shall ever pray.

Wilkinson, Lewis & Wilkinson, J. R. Turney, Solicitors for Complainant.

Duly sworn to by W. S. Wilkinson. Jurat omitted in printing.

[fol. 17] Order

Let the above and foregoing amended bill of complaint be filed and allowed, according to law.

Done and signed this 19 day of January, 1927.

Rufus E. Foster, Judge.

Acceptance of service omitted in printing.

[File endorsement omitted.]

[fol. 18] In United States District Court

Motion to Dismiss—Filed January 19, 1927

J. H. Nattin, Tax Collector, and Consolidated Road District of the Parish of Bossier, Louisiana, made defendants herein, appearing through their solicitors, Milling, Godchaux, Saal & Milling and A. M. Wallace, specially and solely for the purpose of this motion, now move this Honorable Court to recall the rule herein issued and dismiss the bill of complaint upon the following grounds to-wit:

I

(a) The allegations of the bill of complaint herein disclose the fact that Shreveport Bridge & Terminal Company is the owner of certain of the property against which the tax sought to be enjoined has been levied and assessed; that said Shreveport Bridge & Terminal Company has not been made a party plaintiff to said proceedings, though it has an interest therein; that said bill does not disclose that demand has been made upon the said Shreveport Bridge & Terminal Company by the complainant that it institute such proceedings as required by Equity Rule No. 27; that, consequently, the said complainant has no such interest as would entitle it to institute this proceeding on behalf of said Shreveport Bridge & Terminal Company.

(b) In the alternative, and only in the event this Honorable Court should hold that the said complainant has an interest to institute the proceeding insofar as concerns the property of Shreveport Bridge and Terminal Company, then defendants show further unto this Honorable Court that the said Shreveport Bridge and Terminal Company is an indispensable and necessary party plaintiff in this proceeding; and that it should be required to join as party plaintiff herein, and it being within the jurisdiction of this Honorable Court and available for joinder as defendant, if it should refuse to join as plaintiff herein, then that it should be joined herein by order of this Honorable Court.

II

Reserving the benefit of the above grounds herein urged [fol. 19] for the dismissal of the bill of complaint, your defendants show that the allegations of said bill of complaint are so vague and general that they are not sufficient in themselves to support the claim for the relief sought in the bill of complaint, and are not sufficiently specific for your defendants to be able to intelligently answer same.

III

Reserving the benefit of the above grounds herein urged for the dismissal of the bill of complaint, your defendants show that the bill of complaint filed herein does not set forth or disclose a ground or right in equity for the issuance of a preliminary injunction herein, nor does it set forth a ground or right which would entitle the complainant to the relief sought by it in said bill of complaint, and, for this reason, the said bill should be dismissed.

IV

For the above reasons the bill of complaint herein should be dismissed.

Wherefore, for the reasons above set forth, defendants pray the Court to recall the rule herein issued and to dismiss the bill of complaint.

Defendants further pray for all such other and further remedy and relief as the nature of this case may require, and that law and equity will permit.

Milling, Codchaux, Saal & Milling, Solicitor-, & A. M. Wallace, Solicitor. R. C. Milling, A. M. Wallace, R. E. Milling, Jr., of Counsel.

[File endorsement omitted.]

[fol. 20] In United States District Court

Answer—Filed January 19, 1927

Into this honorable court, through undersigned counsel, comes J. H. Nattin, Tax Collector of the Parish of Bossier, and Consolidated Road District of the Parish of Bossier, Louisiana, made defendants herein, who, reserving the benefits of the Motion to Dismiss, and insisting that said motion be tried and disposed of prior to the consideration of the merits of the bill of complaint herein filed, now, by way of further plea and defense to the rule herein, and to the bill of complaint filed by the complainant, show unto this Honorable Court as follows:

A

Before answering seriatim the allegations of the Bill of Complaint herein, defendants show to the Court that under the laws of the State of Louisiana, this complainant has no right to institute this action at this time, and that said right of action, if same ever existed, which is denied, is now prescribed, and preempted, for the following reasons, to-wit:

(a) Your defendants show that the seven (7) mills on the dollar, levied and imposed by the Police Jury of the Parish of Bossier, as the Governing authority of Consolidated Road District of the Parish of Bossier, was levied and imposed and assessed for the sole and only purpose of paying the principal and interest due upon certain bonds issued by Consolidated Road District of the Parish of Bossier, to evidence a debt of $1,630,000.00, incurred by the

Police Jury of the Parish of Bossier as the governing authority of said Consolidated Road District for the Parish of Bossier, which debt was incurred, and which bonds were issued under authority of a vote of the property tax payers entitled to vote under the Constitution and Laws of the State of Louisiana, in an election held in said Consolidated Road District of the Parish of Bossier on December 22nd 1925, after due notice published in the Official Journal of said Parish for a period of thirty (30) days, as required by the Constitution and laws of the State of Louisiana, and at which election a majority of the property tax payers, qualified to vote under the Constitution and laws of the State of Louisiana, in number and amount, did vote in favor of the issuance of said bonds; that the results of said election were duly promulgated by [fol. 21] the Police Jury of the Parish of Bossier, acting as the governing authority of said Consolidated Road District of the Parish of Bossier at a meeting held on December 29th, 1925, and that the results of said election were duly promulgated by publication in the Official Journal of the Parish of Bossier, in the "Bossier Banner," in the issue of date December 31st, 1925; that subsequent to sixty (60) days from the date of said promulgation of said election, the bonds authorized at said election were offered for sale, after due advertisement, on March 9th, 1926, and were purchased by the Commercial Securities Company, Caldwell & Company and Whitney-Central Trust and Savings Bank of New Orleans, Louisiana; that said bonds were duly signed by the proper officers of said Consolidated Road District, and were certified to by the Secretary of State of the State of Louisiana at the time and in the manner provided by Section 34 of Act 46 of the Acts of the General Assembly of the State of Louisiana for the year 1921, and were sealed with the great seal of the State of Louisiana. That said bonds contained a recital of regularity as required by Section 33 of Act 46 of the Acts of the General Assembly of the State of Louisiana for the year 1921; that the said bonds have been delivered to the purchasers and payment has been received therefor and the bonds are now in the hands of innocent holders and, under Section 42 of Act 46 of the General Assembly of the

State of Louisiana for the year 1921 have the quality of negotiable paper under the law merchant; that, thereafter, to-wit, August 10th, 1926, the Police Jury of the Parish of Bossier, acting as the governing authority of said Consolidated Road District of the Parish of Bossier, did levy and impose against all property subject to taxation in said Consolidated Road District of the Parish of Bossier, Louisiana, for the year 1926, a tax of seven mills on the dollar, and did order the Assessor of the Parish of Bossier to extend said tax upon the Rolls for the year 1926, and did order the tax collector to collect same; that a copy of said ordinance was duly published in the "Bossier Banner," the Official Journal of the Parish of Bossier, in the manner required by law; that is, in the issue of said newspaper from the 19th day of August 1926 to Sept. 23, 1926; that all of the above facts and incidents were effected prior to the institution of this action by the said complaint herein.

[fol. 22] (b) That under the Constitution and laws of the State of Louisiana, and particularly Paragraph "n" of Section 14 of Article XIV of the Constitution of the State of Louisiana for the year 1921, and Section 43 of Act 46 of the Act of the Legislature of the State of Louisiana for the year 1921, and Sections 33, 34, 35 and 42 of said Statute, Act 46 of 1921 and Section 11 of Act 118 of the General Assembly of the election, the bonds or the tax levied, imposed and assessed for the purpose of paying said bonds or the tax levied, imposed and assessed for the purpose of paying said bonds in principal and interest, was limited to sixty (60) days from the date of the promulgation of the result of the election, and that, as the said complainant did not avail itself of the right to institute such action within the time thus fixed by law, the complainant's right to launch this proceeding and to attack the validity of said tax is now prescribed, and is barred by the Constitutional and statutory limitation of sixty days, and defendants now especially plead, in bar of complainant's action, the constitutional and statutory preemption and prescription of sixty (60) days, as provided by the Constitution and laws of the State of Louisiana, as particularly above enumerated.

(c) Defendants further show that it is provided by Section 43 of Act 46 of the General Assembly of the State of Louisiana for the year 1921 that

"If any resolution be adopted or proceeding had, more than thirty (30) days after the promulgation of the result of the election, no contest, action or proceeding to question the validity or legality of such resolution or proceeding so adopted, shall be begun in any court by any person for any cause whatsoever, after the expiration of thirty (30) days from the date when the resolution was adopted, or proceeding had."

That more than thirty (30) days have transpired since the promulgation of the result of the election held in said Consolidated Road District on the 22nd day of December, 1925; [fol. 23] that this proceeding was not instituted within the said thirty (30) day period, and that no such proceeding may now be instituted, and defendants now further especially plead, in bar of complainant's action, the preemption or prescription of thirty (30) days as provided by Section 43 of Act 46 of 1921.

(d) Defendants further show unto this Honorable Court that the assessments of property belonging to said complainant herein and to said Shreveport Bridge & Terminal Company, appear upon the General Assessment Rolls of the Parish of Bossier, which is the roll based upon which all taxes, State, Levee, Parish and Local are collected, and that the valuations for said purposes were fixed by the Louisiana Tax Commission, after due notice and hearing, and that the property of other taxpayers which is complained of was fixed after notice and hearing by the Assessor of the Parish of Bossier, the Parish Board of Equalization, the Louisiana Tax Commission, and the Police Jury of the Parish of Bossier, sitting as a Board of Reviewers. That the assessment rolls were filed with Clerk of Court of the Parish of Bossier on October 6, 1926, and that under the law of the State of Louisiana, particularly Act 97 of 1924, the said complainant, if it made the return required by law, or any person at interest making such returns, had the right to resort to the Courts within thirty (30) days following the date of the filing of said rolls for the purpose of contesting the correctness or legality of any assessment

made against the property listed on said return, but that the said complainant did not avail itself of this right, and that such right of action to question, in any manner, the correctness or legality of said assessment is now prescribed by the said period of thirty (30) days, which prescription defendants now especially plead.

(c) Defendants now show that they again especially plead the prescriptions and preemptions of sixty (60) and thirty (30) days, respectively, under the Louisiana constitution and statutes as above set forth, and further show that based thereon, the rule herein issued should be recalled and [fol. 24] the demand of complainant rejected.

B

Reserving the benefits of the above pleas, and insisting that same be considered and passed upon prior to the consideration of the merits, Defendants now, by way of specific answer to the allegations of the bill of complaint filed herein, respectfully show as follows:

In answer to the first unnumbered paragraph of said bill of complaint defendants admit that the St. Louis and Southwestern Railway Company is a corporation organized under the laws of Missouri, and that the defendant J. H. Nattin is Tax Collector of the Parish of Bossier, and that the defendant J. G. McDade is President of the Police Jury of the Parish of Bossier, the governing authority of Consolidated Road District of the Parish of Bossier, and that the said Nattin and the said McDade are within the Western District of the State of Louisiana.

II

In answer to paragraph numbered 1 of said bill of complaint, defendants admit that the said St. Louis and Southwestern Railway Company operates a line of railroad through the States of Missouri, Arkansas and Louisiana, and a branch line from Lewisville, Arkansas to Shreveport, Louisiana, and that a portion of said branch line runs through the Parish of Bossier, and through said Consolidated Road District of the Parish of Bossier.

In answer to paragraph numbered 2 of the bill of complaint, defendants show that the allegations of such para-

graph are conclusions of law, and that they are not called upon to deny or affirm the same. Should this Court require an answer, then defendants show that they deny the allegations of said paragraph.

IV

In answer to paragraph numbered three of said bill of complaint, defendants show that they deny the allegations [fol. 25] of this paragraph except as same may be admitted in the following statement:

Defendants show that Consolidated Road District of the Parish of Bossier was created under Act 118 of the Legislature of the State of Louisiana for the year 1921; is a body politic incorporated in the Parish of Bossier, and is a citizen and inhabitant of said Parish and State and has been a citizen and inhabitant of said Parish and State since its incorporation; that the principal office of said Consolidated Road District is in the town of Benton, Parish of Bossier, Louisiana, which town is located within the Western District of the State of Louisiana.

V

In answer to the paragraph numbered 4 of said bill of complaint, defendants show that they deny the allegations of said paragraph other than as same may be admitted in the following statement:

Defendants show that in or about the year 1913 the Police Jury of the Parish of Bossier created Road District No. 1 of the Parish of Bossier, comprising all of the territory embraced in Wards 1 and 2 and a portion of the territory embraced in Ward 6 of said Parish. That in the year 1915 the said Police Jury of the Parish of Bossier created a Road District known as Road District No. 2 of the Parish of Bossier, comprising that portion of Ward 6 of said Parish not included in Road District No. 1, and in the same year said Police Jury created Road District No. 3 of the Parish of Bossier, comprising those lands located within the limits of Ward 3 of said Parish, and that subsequently the said Police Jury did incur debts and issue negotiable bonds to represent same, it having incurred said debts and issued said bonds under and by virtue of

the authority of elections held in said Districts where at a majority of the property tax payers in number and amount qualified to vote under the constitution and laws of the State of Louisiana authorized the incurring of said debts and issuance of said bonds. That thereafter, to-wit, on or about November 10, 1925, the Police Jury of the Parish of Bossier, after giving notice, and after public [fol. 26] hearing, did create the Consolidated Road District of the Parish of Bossier, including therein the three (3) above-mentioned Road Districts Nos. 1, 2 and 3, and incorporating therein certain other property not theretofore included in a Road District. That said Police Jury of the Parish of Bossier was composed of: J. G. McDade, President, R. E. McDade, R. C. Purcell, S. E. Mays, W. B. Wilbourn and L. M. Burke, and that said Police Jury, under the Constitution and laws of the State of Louisiana, is governing authority of said Consolidated Road District of the Parish of Bossier, Louisiana.

VI

In answer to paragraph numbered 5 of said bill of complaint, your defendants show that they deny the allegations of said paragraph other than to admit that the greater part of the Parish of Bossier was included in said Road District, but they show that the whole of said Parish was not included therein, but that the said Consolidated Road District includes Road Districts Nos. 1, 2 and 3 hereinabove mentioned and other territory, and that the map attached to the bill of complaint shows approximately the location of said District and the lands therein included. Defendants show that said Consolidated Road District was created after a hearing and after the property taxpayers had been notified thereof, and after the property taxpayers had discussed the location of the boundaries of said District.

VII

In answer to paragraph numbered 6 of the Bill of Complaint, defendants show that they admit that the governing authority of said Consolidated Road District of the Parish of Bossier has formed plans for the improvement of said Roads in said District, with the intention of hard-surfacing

or graveling the same. Defendants further show that the estimated cost of such work will exceed the sum of $1,630,000.00, as a portion of said roads are to be constructed under the supervision of the State Highway Department of the State of Louisiana, and the Federal Government, and that the said Highway Commission and the Federal [fol. 27] Government will contribute to the construction of said roads. Defendants admit that the total bond issue authorized to be issued aggregated the sum of $1,630,000.00 which included certain refunding bonds to cover the bonds issued by Road District No. 1, aggregating the sum of $157,000.00; by Rod District No. 2 aggregating the sum of $41,000.00, and the bonds issued by Road District No. 3, aggregating the sum of $42,500.00, and that $1,389,500.00 of bonds have been issued and sold by said Consolidated Road District, and that a tax of seven (7) mills on the dollar for the year 1926 has been levied by the governing authority of said Consolidated Road District, the proceeds and avails of which said tax will be used to meet the annual interest and principal due on said bonds on the first days of March and September, 1927. Defendants further show that said tax was levied and imposed by the governing authority of said Consolidated Road District in accordance with and under the authority of the provisions of the Constitution and Laws of the State of Louisiana, which Constitution and Laws of the State of Louisiana make it the mandatory duty of said Police Jury to levy and impose said tax annually for the purpose of paying the principal and interest of said bonds when and as the same mature. Defendants further show that they deny that the tax thus levied and imposed is in the nature of a special assessment, but they show that said tax is levied and imposed upon all property alike in said District, as shown by the assessment rolls filed by the Assessor of the Parish of Bossier with the Clerk of Court, the Tax Collector of said Parish, and the Auditor of the State of Louisiana, based upon which said assessment rolls all taxes, State, Levee, Parish and Local, were levied, assessed and collected by the Sheriff and Ex-Officio Tax Collector of the Parish of Bossier, and that said tax is required to be levied and thus assessed and collected by the Constitution and Laws of the State of Louisiana.

VIII

In answer to paragraph numbered 7 of said Bill of complaint your defendants show that they admit that the tax [fol. 28] levied and imposed against complainant's property for the year 1926 is approximately $7,003.08, but they deny that said tax is a special assessment. Defendants admit that J. H. Nattin is the Tax Collector of said Parish and is charged with the collection of said taxes due said Consolidated Road District under the statutes and laws of Louisiana; that said Tax Collector is demanding payment of said tax, and that said tax is justly due.

IX

In answer to paragraph numbered 8 of said bill of complaint, your defendants show that they admit that the roads proposed to be graveled, or hard-surfaced, extend in various directions, and that one of said roads runs parallel with the line of railroad operated by the said complainant, which line of railroad runs through Bossier City, by way of Benton, to Arkana. In all other respects the paragraph as amended is denied.

X

In answer to the paragraph numbered 9 of the said bill of complaint, defendants show that they have no information as to who owns the capital stock of the Shreveport Bridge & Terminal Company, and for lack of information on the subject they deny the allegations of this paragraph. Defendants further show that they are informed that said Shreveport Bridge & Terminal Company is domiciled in the City of Shreveport, Louisiana, and they therefore admit this fact. Defendants deny that the complainant is to all intents and purposes the owner of the Shreveport Bridge & Terminal Company, but on the contrary show that said Shreveport Bridge & Terminal Company is a corporation organized under the laws of the State of Louisiana. Defendants admit that said Company owns a bridge across the Red River at Bossier City, in the Parish of Bossier, extending to the Caddo Parish line. Defendants deny that there is any operating contract between Complainant and

said Shreveport Bridge & Terminal Company for lack of information as to this fact. Defendants especially show that the copy of the contract which is attached to the bill [fol. 29] of complaint will not support the allegations contained in the said bill of complaint as to the obligations imposed upon the complainant under said contract.

XI

In answer to the paragraph numbered 10 of said bill of complaint as amended, defendants show that they deny the allegations of this paragraph.

XII

In answer to paragraph numbered 11 of said bill of complaint, your defendants show that they admit that approximately the sum of $1,092.49 represents the tax assessed against the property of the Shreveport Bridge & Terminal Company for the year 1926, which tax was levied and imposed for the purpose of paying the principal and interest of the bonds of said Consolidated Road District. Defendants deny that said complainant is bound to pay said tax, and especially deny that the said complainants may institute or bring this action for and on behalf of the Shreveport Bridge & Terminal Company, or seek to restrain the collection of said tax as against the property of said Shreveport Bridge & Terminal Company, and should this Honorable Court hold that complainant would have any standing whatever to institute such action, then defendants show that said complainant has failed to make the allegations required by Section 27 of the Equity Rules.

XIII

In answer to paragraph numbered 12 of the Bill of Complain, your defendants show that they deny the allegations of said paragraph, except such as may be hereinafter admitted.

Specifically, in answer and reply to the allegations contained in the sub-paragraph numbered "First" of the said paragraph 12, defendants show that they deny that there was any irregularity or illegality in the creation of said District. On the contrary, they show that said District was created after a hearing, in good faith, and in conformity

with the constitution and laws of Louisiana. They fur- [fol. 30] ther show that the Police Jury of the Parish of Bossier created said District; that it is not before the Court, and that by these allegations complainant seeks collaterally to attack the formation of the District, which it is not permitted to do under the law.

Specifically, in answer and reply to the allegations contained in sub-paragraph numbered "Second" of the said Paragraph 12, defendants show that they admit that the Consolidated Road District has levied a tax of seven (7) mills and same has been assessed. They admit that this tax was levied and imposed and assessed for the purpose of paying the principal and interest on the bonds due and payable on March 1st, 1927, and the semi-annual interest due and payable on September 1st, 1927, and in this connection show that said bonds are dated March 1st, 1926; that said bonds were sold by said Consolidated Road District subsequent to the sixty (60) day period of prescription following the promulgation of the election held in said District on December 22nd, 1925; that the cash proceeds of said bonds have been paid to said District; the bonds have been delivered to innocent purchasers, and the proceeds of said bonds are being used in the construction of the roads in said District. That the first payment of principal falls due March 1st, 1927; that the first payment of interest falls due March 1st, 1927; that there is a semi-annual interest payment falling due September 1st, 1927, and that the proceeds of the tax levied and imposed in said District will be used to pay the first payment of principal and interest on said bonds falling due March 1st, 1927, and the semi annual payment of interest on said bonds falling due September 1st, 1927. That taxes for the year 1927 will not be collected until subsequent to September 1st, 1927, as the assessment rolls for the year 1927 will not be filed until or or after October 1st, 1927, and that in order that the principal and interest of said bonds falling due in the year 1927 may be paid and in order that there may be no default thereon, it was necessary that the seven (7) mill tax be levied and imposed and ordered assessed and collected for the year 1926 [fol. 31] in order that money might be available to meet the principal and interest of said bonds thus due for the year 1927. Defendants further again show that the right

to attack the validity of the ordinance is prescribed and preempted under Section 43 of Act 46 of the Louisiana Legislature of 1921, and Defendants again especially plead this prescription.

XIV

In answer to paragraph numbered 13 of the Bill of Complaint your defendants show that the allegations of this paragraph are so vague and indefinite that defendants should not be required to answer same. Should this Honorable Court require an answer to said paragraph, then your Defendants show that they deny the allegations of said paragraph, and further in answer show that the construction of the road system in said Consolidated Road District will open up all of the territory of said District and make it possible for taxpayers and residents of said District to reach the railroad of said complainant with their freight, a condition which has not heretofore existed due to the fact that there were no roads over which persons, or freight, could be transported from certain portions of said District to the railroad operated by complainant. That the building of said roads will build up and improve the whole of said District; will improve the value of property in said District, and will benefit the towns located in the central portion of said District along the railroad belonging to the complainant, and that the complainant will be one of the prime beneficiaries of the benefits accruing from the construction of said road system to be constructed in said Consolidated Road District of the Parish of Bossier.

XV

In answer to the paragraph numbered 14 of the bill of complaint, your defendants show that they deny the allegations of said paragraph, other than as may be admitted in the following statement: They admit that the property of the complainant in said District has been assessed at the sum of $1,000,440.00, and that the property of the Shreveport Bridge & Terminal Company has been assessed at the sum of $156,070.00. Defendants especially deny that assess- [fol. 32] ments in said District are in any manner illegal, incorrect or discriminatory, and with reference to said assessments they further particularly show that the valua-

tions for assessment purposes of the property of the complainant and the Shreveport Bridge & Terminal Company were fixed by the Louisiana Tax Commission, the authority under the laws of Louisiana which fixes the valuation of public utilities for assessment purposes. Defendants show that they are informed and believe that returns as to valuations were made by this complainant and the said Shreveport Bridge & Terminal Company, as to the value of their property for the year 1926, and that the Louisiana Tax Commission finally fixed such valuations and fixed a date for hearing of any complaints to be urged by said complainant and said Shreveport Bridge & Terminal Company, and as no complaints were urged the valuations were immediately made final and certified to the Assessor of the Parish of Bossier with instructions to assess said property at such valuations thus fixed by said Louisiana Tax Commission. As to the assessment of other property in the District, particularly farm lands, your defendants show that these valuations were fixed in accordance with the laws of the State of Louisiana, which require and authorize a taxpayer to make return on or before April 1st as to the value of his property, which return is then either accepted or revised by the Assessor. That thereafter the Parish Board of Equalization did meet for twenty (20) days in the Parish of Bossier, after due published notice, to hear complaints and to equalize said assessments; that subsequent to that time the Louisiana Tax Commission, after published notice, fixed a hearing in the City of Baton Rouge, at which hearing any and all taxpayers could object to the valuations of any and all property fixed for assessment purposes, and that thereafter the Police Jury of the Parish of Bossier did meet in public session as a Board of Reviewers to hear complaints, said meeting having taken place after due published notice, and that after all of said hearings the rolls were finally approved and filed with the [fol. 33] Clerk of Court and the Tax Collector on October 6, 1926, in the manner as provided by law. That this complainant, or any other party at interest, was allowed thirty (30) days under the statutes of the State of Louisiana, from the date of the filing of said rolls, to protest said assessment. That this complainant did not file any such objection, and is now precluded from questioning same;

its rights so to do being prescribed, which prescription Defendants again especially plead. Defendants show further that no other taxing bodies are before this Court. That the attack herein made upon the assessments amounts to a collateral attack thereon, and complainants are not permitted under the law to collaterally attack said assessments thus made by the Louisiana Tax Commission, the Assessor of the Parish of Bossier, and the Police Jury of said Parish. Furthermore, defendants show that complainant having offered to pay all other taxes based on said assessment is now estopped from questioning its correctness, which estoppel defendants especially plead.

XVI

In answer to paragraph numbered 15 of the Bill of Complaint, as amended, your defendants show that they deny the allegations of this paragraph, other than to admit the bare fact that property belonging to the Complainant herein within Consolidated Road District is part of the main line of railroad running from Shreveport north into and through the State of Arkansas.

XVII

In answer to paragraph numbered 16 of said bill of complaint your defendants show that they deny the allegations of said paragraph.

XVIII

In answer to paragraph numbered 17 of said bill of complaint, defendants show that they deny the allegations of this paragraph, and further in answer thereto they show that the true facts are that the Police Jury of the Parish of Bossier did, on September 16, 1925, at a public session, adopt an ordinance giving notice of its intention to meet on October 13th, 1925, for the purpose of considering [fol. 34] the adoption of an ordinance creating Consolidated Road District, and calling an election therein. That the proceedings of said meeting were duly published in the "Bossier Banner," the official journal of the Parish of Bossier for one (1) issue as required by law, and that notice of the meeting to be held on October 13, 1925, was pub-

lished in three (3) issues of the said "Bossier Banner," and that on October 13th, 1925, the said Police Jury did meet in public session and did consider the formation of said Consolidated Road District, and there being certain taxpayers present who made recommendations and urged certain objections, particularly insisting that the boundaries of said Consolidated Road District be enlarged and that the bond issue be increased, the said Police Jury did adopt another ordinance giving notice of its intention to meet in public session on November 10, 1925, to consider the question of creating said District, the proceedings of which said meeting were published in one (1) issue of the Bossier Banner, the official journal of the Parish, as required by law, and said notice of intention to meet on November 10, 1925, was published in three (3) issues of said "Bossier Banner," prior to said meeting. That on November 10, 1925, the said Police Jury did meet and there being no objections urged to the creation of said Consolidated Road District, the creation of said District was confirmed and a special election was duly called to be held in said Consolidated Road District on December 22, 1925, whereat the property taxpayers in said District were authorized to vote, under the Constitution and laws of the State of Louisiana, on the question submitted as to whether said District should incur a debt in the sum of $1,630,000.00 (including Liquidation bonds to cover bond issues authorized by original Road Districts Nos. 1, 2, and 3), and notice of said election was published for thirty (30) days in the manner required by the Constitution and laws of the State of Louisiana in the "Bossier Banner," the official journal of the Parish, in five (5) weekly issues of said newspaper, and said election resulted in favor of the proposition sub-
[fol. 35] mitted, a majority in number and amount of the property tax payers qualified to vote under the Constitution and laws of Louisiana voting in favor thereof, and on December 29, 1925, the said Police Jury of the Parish of Bossier, as the governing authority of said Consolidated Road District, did duly canvass the returns and declare said election to have been carried, and did duly promulgate same in the manner required by law, the notice of said promulgation and the promulgation of said election having been published in the "Bossier Banner," the official journal

of said Parish, in one (1) issue of said newspaper of date December 31, 1925, as required by law. That on March 9, 1926, subsequent to sixty (60) days from the date of the promulgation of said election—to-wit, December 31, 1927, the Police Jury of the Parish of Bossier did, after due advertisement, accept bids for the sale of said bonds, and did sell said bonds for cash, said sale having been confirmed on March 27, 1926. That said bonds contain a declaration as to the regularity of all proceedings; were duly certified to by the Secretary of State of the State of Louisiana; were acquired by the purchasers thereof and full payment in cash made therefor, and said bonds are now outstanding in the hands of innocent purchasers. That during this whole period of time neither the complainant herein, nor the Shreveport Bridge & Terminal Company, urged any objections to the proceedings; took no action or proceedings to stay the issuance and sale of said bonds within the sixty (60) day period subsequent to the promulgation of said election, as required by the Constitution and laws of the State of Louisiana, and their right of action therefore is now preempted and prescribed, which prescription Defendants again specially plead. Not only is said action prescribed but the said complainant, in addition thereto, in good conscience, is now estopped and precluded from instituting this action at this late day, which estoppel defendants especially plead. Furthermore, defendants show that complainant, [fol. 36] under the guise of attacking the tax levied to pay the principal and interest of said bonds, seeks to collaterally attack and question the legality of the issuance of said bonds; that the bondholders are not before this Court, and in this proceeding complainant is not permitted under the law to collaterally attack the validity of said issue of bonds.

XIX

In answer to paragraph numbered 18 of said bill of complaint, your defendants show that they admit that the complainant has offered to pay all taxes other than the taxes levied by Consolidated Road District of the Parish of Bossier, and that the Tax Collector has refused to accept said payment as he refused to give a full receipt for said taxes as demanded by the said complainant.

XX

In answer to paragraph numbered 19 of said bill of complaint, your defendants show that unless said taxes are paid it is made the duty of the Tax Collector to advertise and sell the property for the payment thereof. Defendants deny all other allegations of this paragraph, and especially deny that an injunction should issue herein.

XXI

In answer to the paragraph numbered 20 of said bill of complaint your defendants show that they deny the allegations of this paragraph, and especially deny that this Court has any jurisdiction to consider the demand as therein set forth.

XXII

Defendants further show that under the statutes of the State of Louisiana and particularly Section 56 of Act 170 of 1898, attorneys' fees in the sum of ten per cent (10%) of the aggregate amount of taxes and penalties involved herein should be allowed by judgment of this Honorable Court, and that judgment should be rendered accordingly.

Wherefore defendants pray that the rule herein issued be recalled, and that the bill of complaint be dismissed at [fol. 37] the cost of the complainant, including ten per cent (10%) as attorneys' fees on the total amount of the taxes herein enjoined.

Defendants further pray for all such other and further remedy and relief as the nature of this case may require and that law and equity will permit.

J. H. Nattin, Sheriff and ex-Officio Tax Collector of the Parish of Bossier, Louisiana. Consolidated Road District of the Parish of Bossier, by J. G. McDade, President. Milling, Godchaux, Saal & Milling, Solicitor-. A. M. Wallace, Solicitor. R. C. Milling, A. M. Wallace, R. E. Milling, Jr., of Counsel.

[fol. 38] *Duly sworn to by J. H. Nattin and J. G. McDade. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

Narrative Statement of Evidence

A hearing on the Rule issued to the defendants, to show cause why a preliminary injunction should not issue in the above matter, was had before their Honors, Rufus E. Foster, Circuit Judge, and Ben C. Dawkins and Louis H. Burns, District Judges, on Wednesday, January 19, 1927, in open Court, in the City of New Orleans, Louisiana, and the following testimony was adduced on behalf of the complainant:

A. H. DIEKMAN, being duly sworn, testified by affidavit as follows:

That he is land Appraiser for the St. Louis Southwestern Railway Company, and that at his request, a photostatic copy of a map of Bossier Parish, Louisiana was furnished him by the Deputy Clerk of the Police Jury of said Bossier Parish, Louisiana, and that said map shows the boundaries of Consolidated Road District of Bossier Parish, Louisiana; that all of Bossier Parish, Louisiana is included in said Consolidated Road District except the portion of map colored in red; that he has checked the description of the lands included in Consolidated Road District, and that said map is correct.

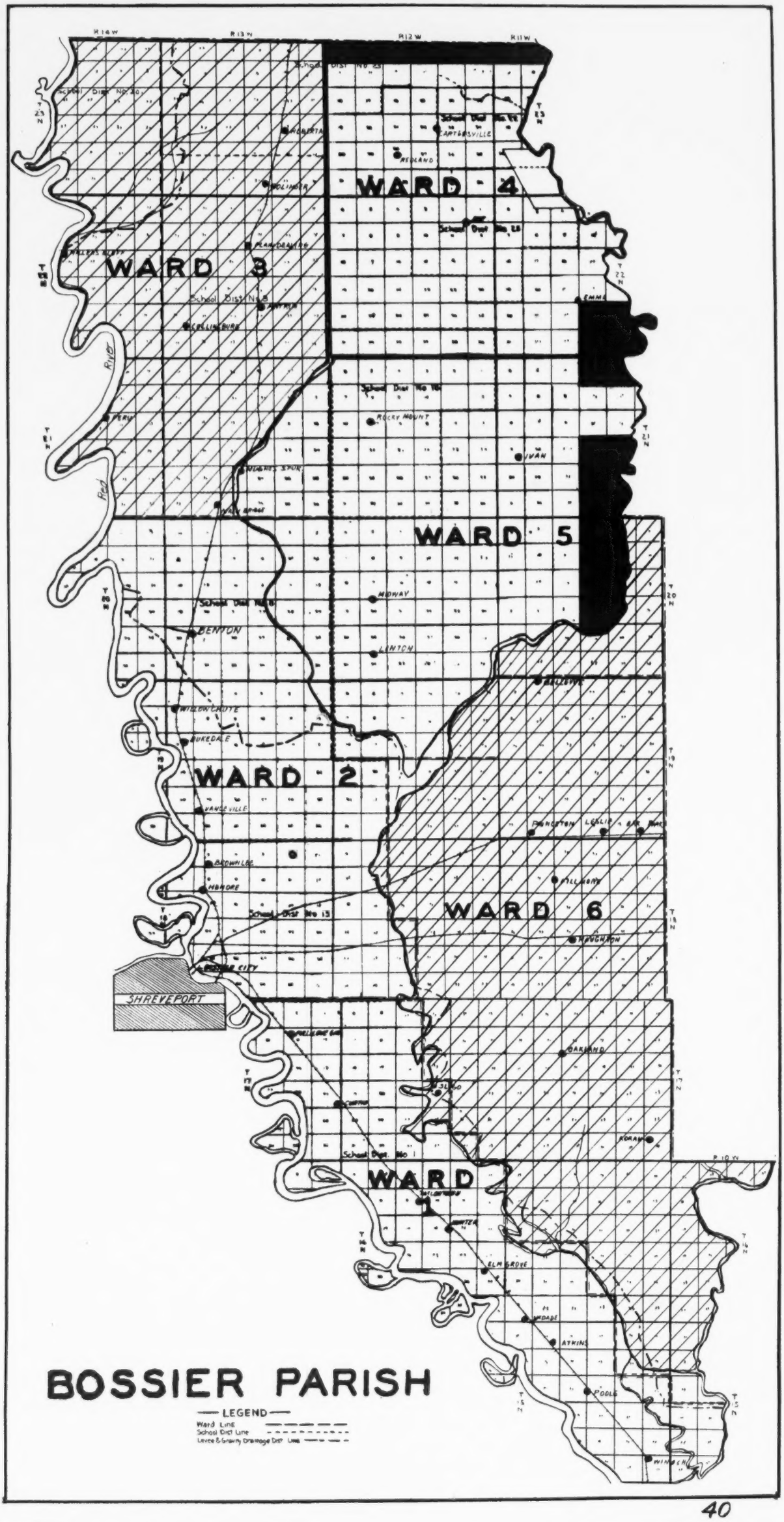
He attaches said map hereto as Exhibit "A" hereof.

(Here follows Exhibit "A", marked side folio page 40)

[fol. 41] A. H. DIEKMAN, being duly sworn, further testifies by affidavit as follows:

That he is a land appraiser for the St. Louis Southwestern Railway Company, and as such is familiar with lands

EXHIBIT "A"


WARD 4
WARD 3
WARD 5
WARD 2
WARD 6
WARD 1
BENTON
SHREVEPORT
BOSSIER PARISH
LEGEND
Ward Line
School Dist Line
Levee & Gravity Drainage Dist Line

along its right-of-way; he has investigated more than 150 sales in Bossier Parish, Louisiana, for the year 1925 taken at random from the Conveyance Records of said parish, particularly Books 78 and 79, which said sales cover lands located in the Consolidated Road District of said parish, and that he has compared the consideration shown in the deeds recorded for the sale of such lands and the assessed valuation for the same lands for the year 1926; that he finds the average valuation for taxation of urban lands included in said sales to be 58-3/10% of the amount for which they were sold and on rural lands said tax value is 40-5/10% of the price for which they sold.

That he also examined at random sales of lands made throughout said parish for the year 1926 and comparing the sales prices for said lands with the assessed value of the same for the year 1226, finds that urban properties are assessed at 54-7/10% of the prices at which they were sold and rural lands are assessed at 39-4/10% of the sale prices for the same.

He further says that he has compared the value of the St. Louis Southwestern Railway Company- lands and the Shreveport Bridge & Terminal Company's lands in the Consolidated Road District of Bossier Parish, Louisiana, as fixed by the Interstate Commerce Commission and upon which value it is taxed, with the value as fixed for taxation purposes of adjoining and adjacent lands; that he finds that the assessed valuation of rural lands is approximately 25% of the assessed value of the Railway's and Bridge [fol. 42] Companies rural lands as fixed by the Interstate Commerce Commission, said lands being similarly situated and of approximately equal value; that as to urban properties the assessment for taxation of adjacent lots is approximately 45-5/10% of the value and assessment of the St. Louis Southwestern Railway Company's lands and those of the Shreveport Bridge & Terminal Company, all of said properties being similarly situated and approximately of equal value.

That he attaches hereto and makes a part hereof, a detailed and itemized schedule or abstract of the said sales and assessments referred to above.

(The said abstract of sales substantiates the testimony of said witness.)

He further states that the valuation of the St. Louis Southwestern Railway's urban and rural properties and those of the Bridge Company, referred to hereinabove, was made by the Interstate Commerce Commission on an appraisal made by its appraiser, E. M. Van Petten, and that said appraiser fixed the valuation of said lands in accordance with the actual market value of adjacent and adjoining properties based on recent sales of such properties.

(P-3.)

B. F. Batts, being duly sworn, testified by affidavit as follows:

That he is Land Attorney for the St. Louis, Southwestern Railway Company; that he attached hereto as Exhibit "A", circular letter furnished him by the Clerk of the Consolidated Road District of Bossier Parish, Louisiana, which letter and statement he is informed and believes was fur-[fol. 43] nished to all of the prospective buyers of bonds of said Consolidated Road District of Bossier Parish, Louisiana, by direction of said road district."

The circular letter and statement attached to the affidavit of B. F. Batts, and marked Exhibit "A", was addressed by R. B. Hill, Clerk of the Police Jury, of Bossier Parish, Louisiana, to all interested bond buyers, under date of February 15, 1926; in which letter it was stated that Bossier Parish would offer for sale bonds of Consolidated Road District of Bossier Parish, Louisiana, in the amount of $1,389,500.00, on March 9, 1926; and in the statement which was sent with the letter, entitled "Statement of Bond Issue, Consolidated Road District of Bossier Parish, Louisiana, the following facts were stated:

Bonds issued by Consolidated Road District of Bossier Parish, Louisiana.

Dated to be sold: March 9, 1926, at ten o'clock a. m., Benton, La. Sealed bids received until ten o'clock a. m., sale day.

Amount of issue: $1,630,000, of which amount $240,500 is to refund outstanding bonds, as follows: Road District No. 1 $157,000; Road District No. 2 $41,000, and Road District No. 3 $42,500.

Amount of issue to be sold: $1,389,500.

Date of Bonds: March 1, 1926, and due one to thirty-nine years, serially.

Purpose of Issue: Highway construction.

Rate of Interest: Five per cent, payable semi-annually, on the 1st day of September and 1st day of March of each [fol. 44] year.

Bonds issued under Article 14, Section 14, Con-titution of the State of Louisiana.

Railroads in District: St. Louis Southwestern, 36.27 miles of main line and 6.56 miles of siding; Louisiana Railway and Navigation Company, 26.16 miles of main line and 6.76 miles of siding; Vicksburg, Shreveport and Pacific, 17.50 miles of main line and 7.21 miles of siding; Louisiana and Arkansas Railway, 17.14 miles of main line and 2.65 miles of siding.

Number of Acres in District: 520,348.

True Valuation (approximate): $25,000,000.

Assessed value for 1925: $17,715,000.

Maturities of Bonds of Road District No. 1 to Be Refunded:

Two bonds during 1926; three bonds during 1927 through 1933; four bonds during 1934 through 1937; five bonds during 1938 through 1940; six bonds during 1941 through 1944; seven bonds during 1945 through 1946; eight bonds during 1947 through 1948; nine bonds 1949 through 1950; ten bonds during 1951 through 1952; eleven bonds during 1953.

Maturities of Bonds of Road District No. 2 to Be Refunded:

Three bonds during 1926 through 1930; four bonds during 1931 through 1940; five bonds during 1941 through 1943; six bonds during 1944 through 1945.

Maturities of bonds of Road District No. 3 to Be Refunded:

Three bonds during 1926 through 1931; four bonds during 1932 through 1941; five bonds during 1942 through [fol. 45] 1944; six bonds during 1945 through 1946.

Said bonds shall mature on the dates and in the amounts and manner as follows:

Bonds numbered 1 through 12, inclusive, aggregating $11,500, maturing March 1, 1927.

* * * * * * *

(P-4.)

W. A. Conaway being duly sworn, testified by affidavit as follows:

"That he is the Tax Agent for the St. Louis Southwestern Railway Lines and for the Shreveport Bridge & Terminal Company; that the basis on which taxes are assessed against the property of said companies in Louisiana is the valuation fixed by the Interstate Commerce Commission, which said Commission is required and attempts to value said properties at their actual cash value based on the actual value of adjacent lands and giving due consideration to recent sales; that as a matter of fact the total valuation of the lands of said corporations in Bossier Parish, Louisiana, as fixed by the Louisiana Tax Commission is slightly in excess of that fixed by the Interstate Commerce Commission, and the valuation of said railroad lands per acre for assessment purposes in the Consolidated Road District of Bossier Parish is from 120 to 300 per cent higher than that of adjacent urban and rural lands similarly situated and of approximately equal value.

He further states that he is informed and believes that other property within the Consolidated Road District of Bossier Parish is assessed on a basis of 40 to 60 per cent of its total worth.

[fol. 46] He further declared that he is the proper official of the said corporations referred to above, to whom all notices affecting assessments, taxes, and the creation of taxing districts should be given, and in fact are referred, that no notice whatever was given to him or to the best of his information and belief to any agent or official of said corporations relative to the creation of the Consolidated Road District of Bossier Parish, or the making of any assessment or levying of any taxes therein, or the issuance of any bonds by said district until affiant inquired of the Tax Collector for Bossier Parish, Louisiana, the amount of taxes due by said corporations for the year 1926, said inquiry being made in the latter part of November and ap-

proximately a month prior to the filing of suit by said corporations against the Tax Collector and against the said Consolidated Road District."

(P-5.)

E. A. Conaway, being duly sworn, further testified by affidavit as follows:

"That he is Tax Agent for the St. Louis Southwestern Railway Company and for the Shreveport Bridge & Terminal Company; that the assessed value of the properties of said companies for the purposes of taxation in Consolidated Road District of Bossier Parish, Louisiana, is as follows:

36.27 miles of main track @ $22,000.00 Mi	$797,940 00
6.56 miles of side track @ 5,000 Mi.	32,800 00
Real Estate outside right-of-way	1,830 00
Rolling Stock	167,870 00
Shreveport Bridge & Terminal Co.	156,070 00
Total	$1,156,510.00

[fol. 47] That he is informed and believes that this valuation as fixed by the Louisiana Railroad Commission is based on the value of the Railway and Bridge Companies' properties as fixed by the Interstate Commerce Commission; that the valuation of said properties so fixed by the Interstate Commerce Commission is as well as he can determine as follows:

St. Louis Southwestern Railway Co. in Bossier Parish

Cost new	Less depreciation	Lands	Net value
$734,595.00	$602,492.00	$136,405.00	$738,897.00

Shreveport Bridge & Terminal Co. in Bossier Parish

$207,175.00	$187,693.00	$417.00	$188,110.00

That the above figures do not include the rolling stock for the reason that he could not apportion the amount of rolling stock of the St. Louis Southwestern Railway Company as

fixed by the Interstate Commerce Commission as used in Bossier Parish, Louisiana, but that his rendition of rolling stock in the entire State of Louisiana for general taxation purposes is $167,870.00."

(P-6.)

J. P. Flournoy, being duly sworn, testified by affidavit as follows:

"That he was born and reared in the Parish of Caddo, in the State of Louisiana, and has been dealing in real estate, either as a real estate agent, Assessor or Sheriff for the past thirty-five years. That he was Assessor of Caddo Parish, which is adjacent to the Parish of Bossier, about four or five years and then was elected Sheriff of [fol. 48] Caddo Parish, which position he held for ten years, and that he is now engaged in the real estate business and is fairly well familiar with the values of property located in the Parish of Bossier, in the State of Louisiana. That in addition to his general knowledge of values in said Parish, brought about by the fact that he has negotiated a number of sales therein, he made a special investigation of the assessment rolls, in a limited way, and of the sales book of said Parish for the purpose of ascertaining, as far as he could, whether the property in said Parish was assessed at its actual cash value or not.

That with this investigation and with his own personal knowledge of the values of a large portion of the property in said Parish, affiant states that in his opinion the property in said Parish is generally assessed for the years 1925, 1926, at from 65 to 75% of its actual cash value.

Illustrating this, among the numerous tracts which affiant investigated was one formerly belonging to the S. S. Hunter Estate, which was sold to W. H. Hodges, as per title in Book 80, page 45, in the year 1925, containing 588 acres, for the sum of Forty Thousand Dollars ($40,000.00), and it is assessed for the year 1926 at the sum of $17,530.00.

Another tract of land sold by Prince et al to W. T. McDade, as per title in Book 79, page 328, in the year 1926, containing 773 acres was sold for the sum of $54,000.00, and its assessment for the year 1926 is $14,180.00.

That J. H. Modewell sold to R. A. Nelson, et al, as per [fol. 49] title in Book 52, page 87 in the year 1919, 227 acres of land, for a sales price of $45,500.00 and the same is assessed at $12,280.00 and in the opinion of affiant said property is worth the sales price today.

That in a number of sales to J. T. Shaw, adjacent to and along the line of railroad of the St. Louis Southwestern Railway Company, he finds that the same cost him on an average of about $110.00 per acre and that its assessment for the year 1926 is on an average of about $50.00 per acre.

That another tract belonging to J. H. Whittington, consisting of 348.74 acres, close to the right of way of the railroad company is assessed at $15,810.00 and in the opinion of affiant said land is worth at least $80.00 per acre and is assessed at $46.00 per acre.

That Mrs. Mary Lee Scoville has 113 acres, a part of the Shady Grove Plantation, right on the right of way of the railroad company, at Vanceville, La., assessed at $4,450.00, which is well worth the sum of $11,300.00.

That without giving all of the sales he investigated, together with the assessment thereof, he reached the conclusion that rural real estate in Bossier Parish and in Consolidated Road District No. 1, was assessed at not more than 65% to 75% of its value."

[fol. 50] (P-6.)

R. W. Reardon, being duly sworn, testified by affidavit as follows:

"That he is Chairman of the Louisiana Tax Commission, created under the Constitution and Laws of the State of Louisiana, with authority and jurisdiction to assess in the State of Louisiana railroads and railroad property;

That in assessing railroads in the State of Louisiana the said Tax Commission, after obtaining all available data, attempts to assess such railway companies on all of their property at the actual cash value of the same, and that this method is and was pursued in the assessment of the St. Louis Southwestern Railway Company for its property in said State."

(P-8.)

W. A. Coxaway, being duly sworn, testified by affidavit as follows:

"That he is Tax Agent for the St. Louis Southwestern Railway Company; that said St. Louis Southwestern Railway Company is an Interstate Carrier operating a railroad through the States of Missouri, Arkansas, Louisiana and Texas, and that a part of said Railway's system consisting of approximately 36.27 miles of trackage runs through the Consolidated Road District of Bossier Parish, Louisiana, from Arkana at the boundary line between Louisiana and the State of Arkansas to Bossier City.

That the principal office of the St. Louis Southwestern Railway Company and the Shreveport Bridge & Terminal Company in Louisiana, and the agent of said companies for [fol. 51] service of legal process are at Benton in Bossier Parish, Louisiana, and in the said Consolidated Road District, and that all of the rolling stock of the said Railroad and of the said Bridge Company in Louisiana is assessed for purposes of taxation in the said Road District.

That the Shreveport Bridge & Terminal Company owns a bridge across Red River at Bossier City, Louisiana in said Consolidated Road District and that the said St. Louis Southwestern Railway Company owns all of the stock of the Shreveport Bridge & Terminal Company and is bound and obligated for the payment of all taxes of whatever nature due by the Shreveport Bridge & Terminal Company.

That affiant is informed and believes and, therefore, avers that the Consolidated Road District of Bossier Parish, Louisiana plans to construct hard surfaced roads in said District, one of which said roads runs parallel with the right-of-way of the St. Louis Southwestern Railway Company from Bossier City, Louisiana, to Arkana, Louisiana, at the boundary line between the States of Louisiana and Arkansas.

That the Tax Collector of Bossier Parish, Louisiana has demanded from the said Railroad Company and the said Bridge Company payment of a seven mills tax for the year 1926 upon the assessed valuation of all property owned by said Companies in the said Consolidated Road District for the payment of interest and the creation of the sinking

fund for the payment of bonds issued by the said Consolidated Road District, the said tax amounting to the sum [fol. 52] of One Thousand Ninety-two Dollars and Forty-Nine Cents ($1,092.49) against the property of the Bridge Company and Seven Thousand Three Dollars and Eight Cents ($7,003.08) against the property of the said Railway Company.

That the said Companies have tendered to J. H. Nattin, Tax Collector for the said Consolidated Road District, all taxes assessed against the property of said Companies located in the said Parish and have offered to pay him all of the said lawful taxes assessed against their respective properties, but he declines and refuses to accept the same unless the said Companies also pay the amount of taxes levied by the said Consolidated Road District as aforesaid and threatens that unless the said Companies pay such Consolidated Road District tax, as aforesaid, to advertise for sale their respective properties located in said District for the payment of said taxes."

(P-9.)

R. H. Laing, being duly sworn, testified by affidavit as follows:

"That he is General Passenger Agent of the St. Louis Southwestern Railway Company, and has been Assistant General Passenger Agent or General Passenger Agent of said St. Louis Southwestern Railway Company for many years; that he has become familiar with the effect of hard surface roads, particularly those which parallel the St. Louis Southwestern Railway Lines at many points in Arkansas and Missouri; that the immediate effect of the building of such roads is to deprive the railroad of practically all of its local passenger business, and to decrease its revenue therefrom, and that he verily believes the build- [fol. 53] ing of the road parallel to the St. Louis Southwestern Railway Company from Bossier City, Louisiana, to Arkana, Louisiana, will deprive the St. Louis Southwestern Railway Company of the major portion of its passenger revenue between such points, and the construction of such roads will not in any way benefit the railroad or increase it value."

(P-10.)

F. W. GREEN, being duly sworn, testified by affidavit as follows:

"I am Vice-President of the St. Louis Southwestern Railway Company, and have been in the railroad business since 1893, about nineteen years of which has been in Arkansas. I was formerly General Manager of the Louisiana & Arkansas Railway and lived at Stamps, Arkansas.

I am familiar with various communities where good roads have been constructed and have seen the benefits which flow from them. Good roads increase the accessibility of land and to that extent add to or enhance the value of that land, the enhancement being proportionate to the productivity and location. Highways do not increase the value of improvements erected on the land for the reason that improvements are perishable and can be replaced in kind at any time. In all cases with which I am familiar, where roads have been constructed parallel to railroads, such construction has resulted in a decrease of the railroad's business, particularly its local traffic, and I verily believe that should such a road be constructed from Bossier City, La., to Ar- [fol. 54] kana, La., as contemplated by Consolidated Road District of Bossier Parish, Louisiana, to connect with roads in Arkansas, it would materially decrease the business of the St. Louis Southwestern Railway Company in Louisiana, and the construction of such roads will not in any way benefit the railroad or increase its value."

(P-11.)

J. D. WATSON, being duly sworn, testified by affidavit as follows:

"That he is the General Traffic Manager of the St. Louis Southwestern Railway Lines; that he is familiar with the traffic conditions both on the St. Louis Southwestern Railway and railroad where hard surface roads have been built paralleling it or such other roads; that the effect of the building of such roads is always to deprive the railroad of the major portion of its local traffic, and that he believes that should a hard surface road be constructed from Bos-

sier City, Louisiana, to Arkana, Louisiana, as contemplated by Consolidated Road District of Bossier Parish, Louisiana, the effect thereof would be to deprive the St. Louis Southwestern Railway Company of a large portion of its local traffic between such points, and the construction of such roads will not in any way benefit the railroad or increase its value."

(P-12.)

F. H. Millard, being duly sworn, testified by affidavit as follows:

"I am Assistant to the President of the St. Louis Southwestern Railway Companies and as such am in charge of [fol. 55] the accounts and statistics of those companies. By profession I am an engineer accountant. I reside at St. Louis, Mo. I have been employed by the St. Louis Southwestern Railway Companies since 1920 and have been their chief accounting officer since 1922. Prior to my employment by these companies I was employed as Assistant to the Director of Traffic of the United States Railroad Administration, in charge of traffic statistics. Prior to that time I was statitician for the Statistical Bureau of all Western Railroads located at Chicago.

An increase in population of the territory served by a railroad, or even an increase in the density of traffic on that railroad, does not mean an increase in net earnings. In the Southwest it has in many cases resulted in a decrease of net revenues. This is true because governmental authorities, state and federal, in fixing the level of rates, deal not with the gross revenues but with the net revenues derived from rates. I have made many statistical analyses of the passenger traffic of the St. Louis Southwestern Railway Companies extending over the period from 1891 down to 1926. Each month it is a part of my duties to analyze the traffic and revenues of the lines, for the purpose of determining any increase or decrease therein and the causes thereof, and for this reason to investigate the particular points and the particular trains on which there has been an increase or decrease. I have found during the past nine years that there has been a constant growing decrease in the passenger traffic and passenger revenues of these com-

panies. In 1926 the total passenger revenue received by [fol. 56] the System was $2,118,000, or but one-half of that received in 1918, which was $4,239,000. From 1918 to 1926 the passenger revenues of the System were as follows:

1918	$4,239,220.68
1919	3,824,338.02
1920	4,031,902.97
1921	3,089,890.93
1922	2,686,793.72
1923	3,390,917.38
1924	2,918,929.44
1925	2,486,944.33
1926	2,118,395.90

An analysis of these decreases shows that they are due entirely to falling-off of local traffic, that is, the short haul traffic between local points and under fifty miles. The investigation shows in each case that the falling-off is due to the use of private automobiles and busses along the improved highways, many hundreds of miles of which have been built along the System's lines in Missouri, Arkansas, Texas and Louisiana.

In addition to the loss of passenger traffic, it has been our invariable experience that when an improved highway, such as those which are to be constructed in this district, is constructed along our railroad, there is a substantial decrease in freight revenue due to the transportation by trucks both privately owned and in carrier service.

The construction of the highways proposed in Consolidated Road District of Bossier Parish will in my opinion [fol. 57] not benefit the System in any sense, but on the contrary will result in a very heavy annual loss in revenues to the System."

(Pltff. 13.)

B. F. Batts, being duly sworn, testified by affidavit, as follows:

"That he is the Land Attorney of the St. Louis Southwestern Railway Company and occupies the same position with the Shreveport Bridge and Terminal Company.

That the said Railway Company owns all of the track of the said Bridge Company and is therefore to all practical purposes owner of its property.

That the said Railway Company by virtue of its contract with said Bridge Company has for over 10 years paid all taxes assessed against said Bridge Company in Louisiana and has by consent been thereby subrogated to all of the rights and obligations of said Bridge Company with reference to said taxes and particularly with reference to such taxes for the year 1926.

That the said Bridge Company has fully authorized and through its officers and directors has directed the said Railway Company to bring suit and stand judgment in its behalf to restrain the Consolidated Road District and the Tax Collector of Bossier Parish, Louisiana, from collecting a seven mill tax against its property and protect and represent any interest whatever it may have in said suit, but that by virtue of said written agreement said Bridge Company has disclaimed any primary interest in the obliga-[fol. 58] tions sought to be imposed by said taxes and has only a secondary residual interest in opposing a collection of same."

W. S. Wilkinson, being duly sworn, testified by affidavit as follows:

"I am a resident of the City of Shreveport, in Caddo Parish, State of Louisiana, and have been a resident of said City for twenty-six (26) years; I am thoroughly acquainted with the roads and highways of Bossier and Caddo Parishes and with the railway lines traversing both of these Parishes. Some of the roads proposed to be improved by the Consolidated Road District of the Parish of Bossier, Louisiana, converge at Bossier City traffic bridge which leads to the City of Shreveport. That from Bossier City and the City of Shreveport various lines of railroad and motor busses operate in competition with the St. Louis and Southwestern Railway Company. That the Louisiana Railway & Navigation Company, the Texas-Pacific Railway Company, the Southern Pacific Railway Company, and the Kansas City Southern Railway Company operate railroad lines out of Shreveport, which

separately, or with their connections, serve points in Northeast and Central Texas which are served by the St. Louis and Southwestern Railway Company. That the Tri-State Transfer Company, the Interstate Motor Bus Corporation, and the Caddo Transfer & Warehouse Company operate motor bus lines out of Shreveport over the improved roads of Caddo Parish, carrying freight and passengers to points in Texas and Arkansas served by the St. Louis and South- [fol. 59] western Railway Company. That the Louisiana & Arkansas Railway Company, the Texas & Pacific Railway Company, the Kansas City Southern Railway Company, and the Transfer and Motor-bus companies referred to above, separately, and in conjunction with their connections at various points, serve points and territory along the line of the St. Louis and Southwestern Railway Company in the southern part of the State of Arkansas."

TESTIMONY FOR THE DEFENDANT

(Deft. 1)

Affidavit of Mr. J. G. McDade and Miss D. W. Brownlee

Mr. J. G. McDADE and Miss D. W. BROWNLEE, both residents of the Parish of Bossier, State of Louisiana, and both of whom are persons of the full age of majority, each of whom, having been first duly sworn, testified by affidavit as follows:

The said J. G. McDade declares that he is President of the Police Jury of the Parish of Bossier, State of Louisiana, and the said Miss D. W. Brownlee declares that she is the Clerk, pro tem, of the Police Jury of the Parish of Bossier, State of Louisiana; that R. B. Hill, the regularly elected Secretary of said Police Jury, is at the present time ill and confined in a hospital, and is unable to make this affidavit.

Both affiants declare that the Police Jury of *of* the Parish [fol. 60] of Bossier is the governing authority of Consolidated Road District of the Parish of Bossier, and that the Police Jury was likewise the governing authority of Road Districts Nos. 1, 2 and 3 of the Parish of Bossier.

Both affiants declare that in the year 1913 there was created by the Police Jury of the Parish of Bossier a certain Road District, known as Road District No. 1, which comprised all of the territory embraced in Wards 1 and 2, and a portion of the territory of Ward 6, designated as Alluvial Lands, and embraced within the boundaries of the Bossier Levee District of the Parish of Bossier, and that said Road District No. 1 did, after being authorized by vote of a majority of the property tax payers in number and amount qualified to vote under the Constitution and Laws of the State of Louisiana, incur a debt and issue negotiable bonds in the sum of One Hundred and Seventy-five Thousand ($175,000.00) Dollars, and did sell said bonds and receive the proceeds thereof, and did use such proceeds in the construction of roads within said Road District No. 1. That the proceedings had by the Police Jury of the Parish of Bossier, as the governing authority of said Road District No. 1, and leading up to the creation of said District and the issuance and sale of said bonds, more fully and at large appears by reference to certified copies of the proceedings of said Police Jury," copy of which was attached to and made a part of this affidavit and marked "Exhibit A."

"That during the year 1915 the Police Jury of the Parish of Bossier did create a certain Road District known [fol. 61] as Road District No. 2, comprising that portion of Ward 6 of the Parish of Bossier, except that portion of said Ward included in Road District No. 1, and did, as the governing authority of said Road District No. 2, after being authorized by vote in number and amount of the majority of the property tax payers qualified to vote under the Constitution and laws of the State of Louisiana, incur a debt in the sum of Fifty Thousand ($50,000) Dollars, and did issue and sell negotiable bonds for said amount representing said indebtedness, the proceeds of which said bonds were used by said Road District No. 2 for the purpose of constructing roads within said Road District No. 2. That the proceedings leading up to the creation of said Road District No. 2 and the issuance and sale of said bonds will more fully and at large appear by reference to a certified copy of the proceedings of said Police Jury which

are hereto attached, made a part hereof, and marked 'Exhibit B."

That during the year 1915 the said Police Jury of the Parish of Bossier did likewise create a certain other Road District in the Parish of Bossier, which was known as Road District No. 3 of the Parish of Bossier, and which comprised all of the lands within the limits of Ward 3 of said Parish, and that the said Police Jury, as the governing authority of said Road District, did, after being authorized by vote of a majority of the property tax payers in number and amount qualified to vote under the Constitution and laws of the State of Louisiana, incur a debt in the sum of [fol. 62] Fifty Thousand ($50,000.00) Dollars, and did issue and sell negotiable bonds to represent said amount, the proceeds of which said bonds were used for the purpose of constructing roads within said Road District No. 3, all of which will more fully and at large appear by reference to a certified copy of the proceedings of said Police Jury, leading up to the creation of said Road District and the issuance and sale of said bonds," which was attached to and made a part of this affidavit and marked "Exhibit C".

"Affiants further declare that in accordance with the Constitution and laws of the State of Louisiana, the said Police Jury of the Parish of Bossier, acting as the governing authority of said Road Districts Nos. 1, 2 and 3, did thereafter, at the time and in the manner provided by law, levy and impose and did assess and collect ad valorem taxes against all of the taxable property in said Districts in order to provide for the payment of the principal and interest of said bonds issued by said three Road Districts, and that said taxes were duly assessed and collected and extended upon the Assessment Rolls by the Assessor of the Parish of Bossier, and duly collected by the Tax Collector of said Parish and the proceeds thereof paid over to the Police Jury of the Parish of Bossier as the governing authority of the said Road Districts Nos. 1, 2 and 3.

Affiants further declare that the railroad and property belonging to the St. Louis and Southwestern Railway Company was and is located in Road Districts Nos. 1 and 3 of the Parish of Bossier, the said railroad being shown be- [fol. 63] tween the points marked "A" and "B" as shown on a certain plat which is hereto attached, made a part hereof, and marked "Exhibit D".

Affiants further declare that certain property belonging to the Shreveport Bridge and Terminal Company is located partly in Road District No. 1 at the point marked "B" on said plat above referred to and marked 'Exhibit D'.

Affiants further declare that in the year 1925 the Police Jury of the Parish of Bossier, availing itself of the power and authority granted it under the Constitution and Laws of the State of Louisiana, did, on September 16, 1925, adopt a certain ordinance declaring that it was its intention to create a consolidated road district to be comprised of the above-mentioned Road Districts Nos. 1, 2 and 3, and certain other lands in the Parish of Bossier, and did order that notice should be published of its intention to meet and consider the creation of said District on October 13th, 1925, all of which will more fully and at large appear by reference to a certified copy of the proceedings of said meeting of September 16, 1925, which is hereto attached, made a part hereof, and marked "Exhibit E".

Affiants further declare that, in accordance with said resolution of said Police Jury, notice of the intention of said Police Jury to create said Consolidated Road District was duly and seasonably published in the "Bossier Banner", the official journal of the Parish of Bossier under date of September 24th, October 1st and 8th, respectively, [fol. 64] all of which will more fully and at large appear by reference to affidavit of the Publisher of said newspaper, together with a copy of said newspaper of said dates, which were attached to and made a part of this affidavit and marked "Exhibit F", "Exhibit F-1", "Exhibit F-2" and "Exhibit F-3", respectively.

"That said Police jury of the Parish of Bossier did, on October 13, 1925, meet, and certain taxpayers having appeared and urged objections to the boundaries of the District as proposed by the Police Jury, and to the amount, it being claimed that more territory should be taken into the District and that the bond issue should be increased in order that certain roads might be paved and certain other lateral roads built, the said Police Jury did enlarge the proposed boundaries of said Consolidated Road District, and increase the bond issue, and did adopt a resolution declaring its intention to create said Road District in accordance with the desires of said taxpayers, and of their intention to meet again on the 10th day of November, 1925, for

the purpose of creating said Road District, and ordering the election, all of which will more fully and at large appear from a certified copy of the proceedings of said Police Jury of date October 13, 1925," which was attached to and made a part of this affidavit and marked "Exhibit G".

"Affiants declare that said notice was duly published in the 'Bossier Banner,' the official journal of the Parish of Bossier, under date of October 22nd, October 29th, and November 5th, 1925, as will appear from an affidavit of [fol. 65] the Publisher of said 'Bossier Banner', together with copies of the newspapers," copies of which were attached to and made a part of this affidavit, and marked "Exhibits H, H-1 and H-2", respectively.

"That the said Police Jury did meet on November 10, 1925, and no objection having been urged to the creation of said Road District (which fact is shown by affidavit of R. B. Hill, Secretary of said Police Jury, which is hereto attached, made a part hereof, and marked "Exhibit I"), the said Police Jury did then adopt an ordinance confirming and ratifying the consolidation of the said Road Districts, and did call a special election to be held in said Consolidated Road District on the 22nd day of December, 1925, and that the said Police Jury did cause to be prepared and published a notice of said election, which said notice was published in the 'Bossier Banner' the official journal of the Parish of Bossier, a newspaper printed and published in said Parish, in the issues of November 19th, 26th, December 3d, 10th, 17th and 25th, 1925, and the minutes of the meeting of November 10, 1925 were published in said official journal in the issues of November 19, 1925, all of which will more fully and at large appear by reference to affidavits of the publisher of said 'Bossier Banner', and copies of said newspapers of date November 19, 1925 and December 17th, 1925, "which were attached to and made a part of this affidavit, and marked "Exhibits J, J-1, J-2 and J-3" respectively.

"Affiants further declare that the said Police Jury of the [fol. 66] Parish of Bossier, acting as the governing authority of said Consolidated Road District, did, on December 29th, 1925, meet and did duly promulgate the returns of said election and declare the said election to have been carried by vote of a majority in number and amount of the

property taxpayers qualified to vote under the Constitution and Laws of the State of Louisiana, as will appear from a certified copy of the proceedings of said Police Jury of said date," which was attached to and made a part of this affidavit and marked "Exhibit K."

"Affiants further declare that a certified copy of the Proces Verbal of said Police Jury promulgating said returns, as shown in said copy of said proceedings hereto attached and marked "Exhibit K", was duly and seasonably recorded with the Recorder of Mortgages of the Parish of Bossier (as will appear from a Certificate hereto attached and marked "Exhibit L") was filed with the Secretary of State of the State of Louisiana, as will appear from a Certificate hereto attached, made a part hereof, and marked 'Exhibit M', and the result of said election was duly and seasonably promulgated by publication in the 'Bossier Banner', official journal of the Parish of Bossier, on December 31st, 1925, as will more fully and at large appear by affidavit of the Publisher, and copies of said newspaper," which were attached to and made a part of this affidavit, and marked "Exhibits X and X-2", respectively.

"Affidavits further declare that said Police Jury did thereafter, on January 12th, 1926, meet, as the governing [fol. 67] authority of said Consolidated Road District, and did incur a debt on behalf of said Consolidated Road District in the sum of One Million Six Hundred and Thirty Thousand ($1,630,000.00) Dollars, and did authorize the issuance of negotiable bonds to represent same, the proceedings of which said meeting were duly published in the official journal of the Parish of Bossier, the 'Bossier Banner', in the issue of said newspaper of date January 21, 1926, as will appear from an affidavit of the Publisher of said 'Bossier Banner' and a copy of the newspaper of said date wherein appears a full and complete copy of all proceedings of said Police Jury", which were attached to and made a part of this affidavit and marked "Exhibit O" and "Exhibit O-1", respectively.

"Affiants further declare that the Liquidation Bonds to cover the bond issues of the original Road Districts Nos. 1, 2 and 3, were placed in the State Treasury, in the manner provided by law, and the Police Jury did thereafter, after advertising notice in the manner required by law, receive

(on March 9th, 1926) sealed bids for the sale of said bonds, and did accept the bids of Caldwell & Company, the Commercial Securities Company, and the Whitney-Central Trust and Savings Bank, and did sell said bonds to said Caldwell & Company, Commercial Securities Company, and Whitney-Central Trust and Savings Bank; said notice of said meeting having been published in the 'Bossier Banner', the official journal of said Parish of Bossier, under date of March 18th, 1926, all of which will more fully and at large appear by reference to affidavit of the Publisher of said [fol. 68] newspaper, and a copy of said newspaper of date March 18th, 1926," which were attached to and made a part of this affidavit, and marked "Exhibit P" and "Exhibit P-1", respectively.

"That said Police Jury did thereafter, at a meeting held on March 27, 1926, confirm said sale and appoint depositories for the funds, as will appear from a copy of the proceedings of said Police Jury of date March 27, 1926," which was attached to this affidavit and made a part thereof, and marked "Exhibit —". "Which said proceedings were duly published in one issue of the 'Bossier Banner', the official journal of said Parish, in the manner required by the laws of the State of Louisiana."

"Affiants further declare that on March 29, 1926, the Clerk of the District Court of the Parish of Bossier issued his Certificate certifying that no proceedings had been instituted attacking the validity of the bonds authorized to be issued and sold, or the taxes to be levied and collected therefor, as appears from a Certificate which is hereto attached, made a part hereof, and marked 'Exhibit R', and the said bonds were duly printed and were duly certified to by the Secretary of State of the State of Louisiana, in the manner provided by law, and delivery of said bonds was made to the purchasers thereof and the said Police Jury of the Parish of Bossier, as the governing authority of said Consolidated Road District, did receive the total purchase price thereof, to-wit, the sum of One Million, Three Hundred Ninety-five Thousand and Ninety-six and 13 100 [fol. 69] ($1,395,096.13) dollars, said delivery of said bonds and the payment of said purchase price having been made on March 31st, 1926.

Affiants further declare that prior to the creation of said District and the calling of said election, the Police Jury

did cause to be prepared a map of said Consolidated Road District, wherein was shown the proposed roads to be constructed in said District, and the amount of money to be expended upon each road, a copy of which map thus prepared is hereto attached, made a part hereof, and marked "Exhibit S." The roads in said Consolidated Road District which were to be paved or hard-surfaced are shown on said map marked in red and green, the total mileage of the proposed system of roads in said District aggregating approximately 130 miles.

Affiants further declare that work on said proposed roads has already begun; that in co-operation with the Highway Commission of the State of Louisiana (assisted by the Federal Government) contracts have been let for the construction of approximately fifty (50) miles of said roads, and that from time to time contracts will be let for the construction of the remaining roads.

Affiants further especially declare that the road running from the Arkansas line at Arkana is a portion of the State Highway System of the State of Louisiana; that this road is being constructed by the Highway Commission of the State of Louisiana, the funds for the construction of [fol. 70] same being provided by Consolidated Road District of the Parish of Bossier, the State Highway Commission of the State of Louisiana, and the Federal Government, and in the construction of said road from said Arkana to Bossier City the said Highway Commission is utilizing, to a large extent, the roads theretofore constructed by Road District Nos. 1 and 3 of the Parish of Bossier.

Affiants further declare that the bonds issued and sold by said Consolidated Road District were dated March 1st, 1926; that said bonds begin to mature on March 1st, 1927, and that the interest on said bonds is payable semi-annually, on March 1st, and September 1st of each year, except the interest for the first year, which is payable March 1st, 1927.

That the taxes of the Parish of Bossier and said Consolidated Road District are assessed for the whole year, the rolls being filed on or about October 1st of each year, and the taxes are collected by the Tax Collector during the months of October, November, December, January and February of each year. That under the Constitution and

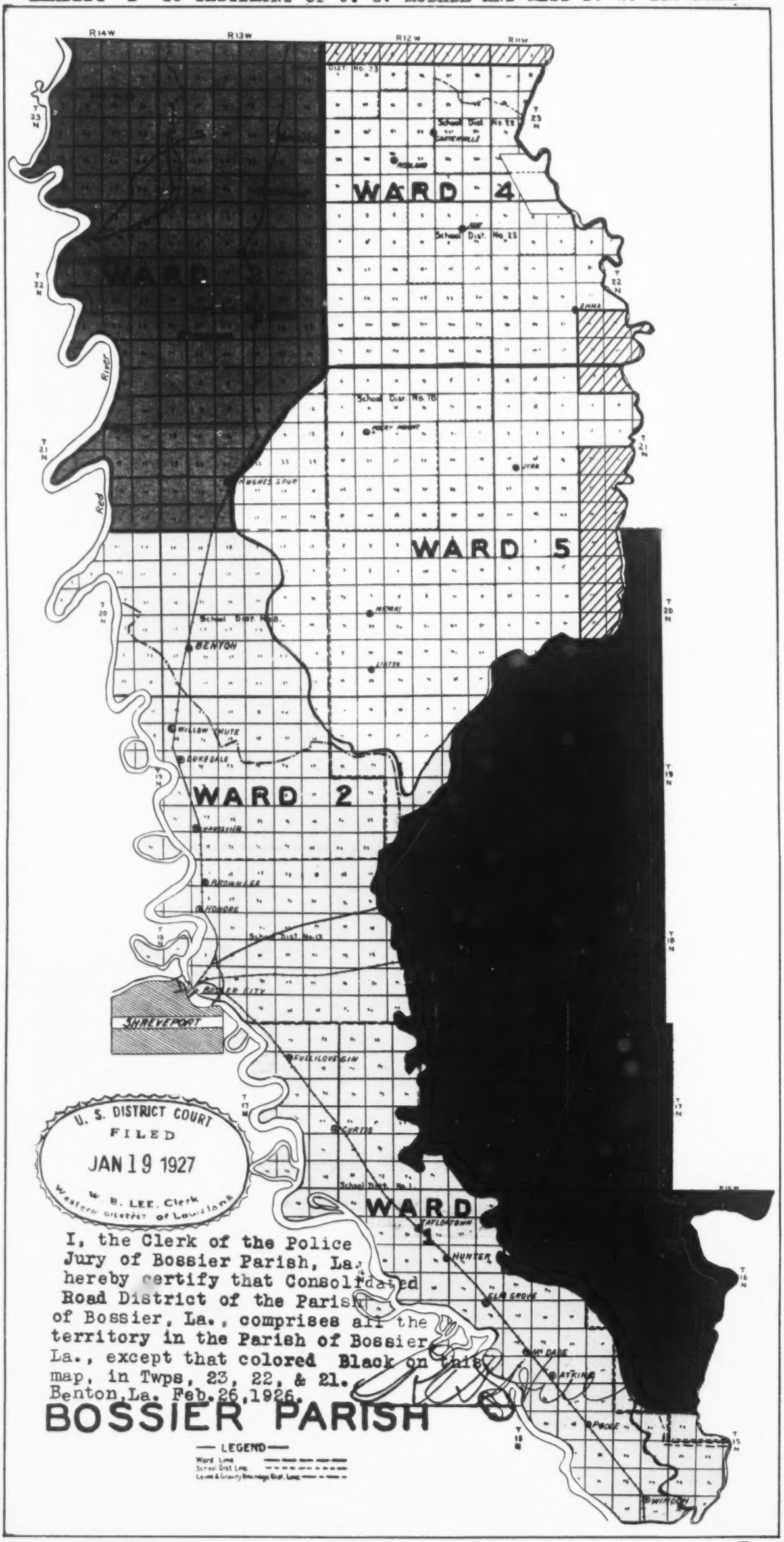
Laws of the State of Louisiana, it is the mandatory duty of the Police Jury of the Parish of Bossier, as the governing authority of said Consolidated Road District, to impose and collect, annually, in excess of all other taxes, a tax sufficient to pay the interest annually, or semi-annually, and the principal, falling due each year, on said bonds issued by said Consolidated Road District of the Parish of Bossier, and especially, in accordance with the provisions of Section 14 of Act 118 of 1921 is it the duty of said Police [fol. 71] Jury "in apt time and manner to levy a tax sufficient to pay the interest upon all of the bonds of each series as it accrues, and to pay the principal as it matûres."

Affiants further declare that in accordance with this mandatory duty imposed upon it under the Constitution and Laws of the State of Louisiana, the Police Jury of the Parish of Bossier, as the governing authority of said Consolidated Road District, did, on August 10, 1926, adopt a certain resolution levying a tax of seven (7) mills on the dollar, the proceeds of which was to be used for the purpose of paying the principal of said bonds maturing March 1st, 1927, and the interest due March 1st and September 1st, 1927, respectively, all of which will more fully and at large appear by a certified copy of said resolution which is hereto attached, made a part hereof, and marked "Exhibit T."

Affiants further declare that said ordinance was duly published in the "Bossier Banner" the official journal of the Parish of Bossier, in six issues of said newspaper, as will apear from affidavit of the Publisher of said newspaper, together with a copy of said newspaper, which are hereto attached, made a part hereof, and marked "Exhibit U" and "Exhibit U-1" respectively.

Affiants further declare that the Police Jury will be required to meet the interest and principal of said bonds of said Consolidated Road District due March 1st and September 1st, 1927, aggregating approximately the sum of [fol. 72] $122,240.00; that the total amount which will be realized from the seven (7) mill tax based upon the assessment in said Consolidated Road District, affiants are informed, will amount to approximately the sum of $125,000.00. That the Board is required to pay its proportion of the cost of assessing and collecting said taxes, based on the

EXHIBIT "D" TO TESTIMONY OF J. G. MCDADE AND MISS D. W. BROWNLEE



U. S. DISTRICT COURT
FILED
JAN 19 1927
W. B. LEE, Clerk
Western District of Louisiana

MAPS

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FOR

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cost of collecting all of the taxes of said Parish, and that the net proceeds of said taxes will just about equal the amount required to pay the principal and interest of said bonds for the year 1927, and that if said taxes are not paid said Consolidated Road District will have no funds available to meet the principal and interest requirements of said bond issue for the year 1927.

Said affiant, J. G. McDade, declares that he has been a member of the Police Jury of the Parish of Bossier for the past fifteen (15) years, and that he has been President of said Police Jury for the past three (3) years; and

Said affiant, Miss D. W. Brownlee, declares that while she has been Clerk Pro Tem of the Police Jury of the Parish of Bossier for the past three (3) months, she has been the assistant of Mr. R. B. Hill, the Secretary of said Police Jury of the Parish of Bossier for at least thirteen (13) years, and is familiar with all of the matters and things set forth in the above and foregoing affidavit."

The exhibits referred to in the affidavits of the deponents, J. G. McDade and Miss D. W. Brownlee, and attached to their affidavits, corroborate the facts set forth in the said affidavits.

(Here follow Exhibits D and S, marked side folio pages 73 and 74.)

[fol. 75] (Def't's Ex. 2)

Robert W. Riordan, being duly sworn, testified by affidavit as follows:

1. That he is the Chairman of the Louisiana Tax Commission; that the Louisiana Tax Commission is a constitutional board, created under the Constitution of Louisiana, which Commission supervises the assessments of lands and other property in the State of Louisiana, and which Commission, particularly, fixes the valuation for assessment purposes of railroads and railroad property in the said State; that the rules of the said Commission and the laws of the State require railroads to make a return of the physical value of their property to the said Commission; that

this valuation is reviewed by the said Commission and the valuation for assessment purposes is then fixed.

2. That the St. Louis Southwestern Railroad Company did, in the year 1926, file with the said Louisiana Tax Commission the report required by the laws of the State and the rules of the Commission, wherein it did fix the valuation of its physical property, in the Parishes of Bossier and Caddo, at the sum of $890,396.54.

3. That the said Commission did examine said return and, after due consideration, did fix the value of said property in said two parishes at $1,161,952.00, and did, on June 24th, 1926, certify such valuation and did notify the said St. Louis Southwestern Railroad Company of the fixing of such valuation, and did further notify said company that if there was any objection to the valuation thus fixed, that [fol. 76] it should file a protest on or before Friday, July 9th, 1926, on which day the said Commission would hear such protest. Affiant further declares that the said St. Louis Southwestern Railroad Company made no protest whatsoever to the action of the said Commission, and that the said Commission accordingly fixed such valuation as final and certified same to the Assessors of the Parishes of Bossier and Caddo, with instructions to list in the respective Parishes upon the assessment rolls of the year 1926, the property located in each respective parish at the valuation fixed by the Commission.

4. Affiant further declares that in accordance with the laws of the State of Louisiana, the Assessor of the Parish of Bossier filed with the Louisiana Tax Commission an abstract of his assessment rolls showing the valuation for assessment purposes of all property in the Parish of Bossier, other than public utilities, including the St. Southwestern Railroad Company, which valuations had theretofore been fixed by the said Louisiana Tax Commission; that the Louisiana Tax Commission and the said Assessor did cause to be published in the Official Journal of the Parish of Bossier the notice required by law of the fact that such abstract and valuations had been filed with the said Commission, and the said Commission did give notice, in said published notice, that on August 12th, 1926 it, the said Commission, would hear any and all objections that might be urged to the valuations as fixed by said Assessor,

and that on said August 12th, 1926 the said Commission did [fol. 77] review said rules with the said Assessor, did hear said objections as might have been urged and did finally approve the valuations as corrected for the purposes of the assessment for the year 1926, in and for the Parish of Bossier. The said St. Louis Southwestern Railroad Company did not appear at said hearing held on August 12th, 1926, and did not urge any objections to the valuations as fixed and returned by the said Assessor.

5. Affiant further declares that the Louisiana Tax Commission has heretofore fixed general classifications for farm and other lands in the State of Louisiana; that it has classified farm lands as Classes A, B, and C; that it has classified pasture lands and cut-over swamp lands, and that these classifications and the rules of the said Commission are followed by the Assessors in the State in the valuation of lands for assessment purposes, which rules are applicable all of the State, including the Parish of Bossier.

(Defendant's Ex. 3)

Wm. J. Stelling, being duly sworn, testified by affidavit as follows:

That he is the Assistant Secretary of the Louisiana Tax Commission and that said Commission has jurisdiction over the valuation for assessment purposes of the property of the Shreveport Bridge & Terminal Company, and that he, as Assistant Secretary, has charge of the records of said Louisiana Tax Commission, concerning the fixing of [fol 78] said valuations by the said Louisiana Tax Commission.

Affiant further declares that on August 2nd, 1921, there was published in the Times Picayune, a daily newspaper published in the City of New Orleans, an item to the effect that the Interstate Commerce Commission had fixed the valuation of the property of the Shreveport Bridge & Terminal Company at $450,347.00; that for the year 1921 the Louisiana Tax Commission placed a valuation on the property of said Company at $35,000.00, which valuation was protested by said Company on June 22, 1921, the same Company claiming that an adequate allowance for depreciation had not been made, and requested an allowance of 28%. The Louisiana Tax Commission allowed a depreciа-

tion at the rate of 2% per annum for thirteen (13) years, thereby reducing the value of said property for assessment purposes for the year 1921 from $350,000.00 to $325,000.00, one half of said property being assessed in Bossier Parish and one-half in Caddo Parish. On December 31st, 1925, the said Shreveport Bridge & Terminal Company returned a valuation of $270,723.34 upon its said property. The Commission established a valuation of $312,130.00, said valuation being based upon the valuation established for the year 1921, less depreciation, which valuation was certified to W. A. Conway, Tax Agent, Shreveport Bridge & Terminal Company, under date of June 24, 1926, at which time the Commission fixed July 9th, 1926, as the date to hear protests. No protests were filed and this value was ordered made final by order of the Commission, and the Assessors of the Parishes of Bossier and Caddo were duly notified.

[fol. 79] (Def't- Ex. 4)

J. H. Nattin, being duly sworn, testified by affidavit as follows:

That he is the Sheriff and Ex-Officio Tax Collector for the Parish of Bossier, State of Louisiana, and has been since June, 1924, and that the Shreveport Bridge and Terminal Company paid their taxes for the years 1924 and 1925 by check drawn and signed by the said Shreveport Bridge and Terminal Company and that they offered a check for their taxes for the year 1926 less the taxes for Consolidated Road District and requested that he issue a receipt in full for all taxes due for the year 1926 which he refused to do, and that said check was signed by the Shreveport Bridge and Terminal Company.

(Def't- Ex. 5)

J. H. Nattin, being duly sworn, further testified by affidavit as follows:

That he is the Sheriff and Ex-Officio Tax Collector of the Parish of Bossier and has been for three years; that he

is now collecting taxes in the Parish of Bossier, based upon the assessment roll for the year 1926, which was filed with him as tax collector by the Assessor, Mr. E. D. Taylor; that the property belonging to the St. Louis Southwestern Railroad Company is valued upon said Roll at the sum of $1,440,000.00 and that the property of the Shreveport Bridge & Terminal Company is valued on said Roll at [fol. 80] $156,070.00; that these valuations and assesments are the valuations and assessments based upon which all state, parish and local taxes are paid, including the taxes levied, assessed and ordered collected by the Consolidated Road District of the Parish of Bossier, and that no distinction is made between the assessment for state and parish purposes and the assessment for said Consolidated Road District; that said St. Louis Southwestern Railroad Company and said Shreveport Bridge & Terminal Company have offered to pay all taxes levied and imposed for all purposes other than the tax levied and imposed by the Consolidated Road District of the Parish of Bossier, and that affiant refused to accept payment thereof, as he would not issue a full receipt unless and until all taxes levied and assessed, including the tax levied and assessed by the Consolidated Road District of the Parish of Bossier, had been paid.

Affiant further declares that as Sheriff and Ex-Officio Tax Collector of the Parish of Bossier, prior to 1926, the St. Louis Southwestern Railroad Company and the Shreveport Bridge & Terminal Company paid, without protest, all taxes levied, assessed and collected by Road Districts 1 and 3 of the Parish of Bossier, the assessments, based upon which said taxes were paid, being identical in form with the assessment for the year 1926; the assessment on which such road taxes were paid being the general assessment of said property and based upon which all state and other taxes were paid by said Companies.

Affiant further declares that there are always adjustments and cancellations in the assessments of the Parish [fol. 81] of Bossier, and certain other items not collectible; that the Consolidated Road District of the Parish of Bossier is required to bear its proporation of the expenses of collecting all taxes and that, in addition, it pays its pro-

portion of the expense of assessing these taxes, and while the total taxes levied and assessed by said District, according to the Assessment Roll, amounts to the sum of $125,825.27, affiant verily believes that the net amount payable to said District, after all adjustments and deductions are made, will hardly equal $122,000.00.

(Def't's Ex. 6)

V. V. Whittington, being duly sworn, testified by affidavit as follows:

That he is the Treasurer of the Parish of Bossier and has been for seven years and that as Treasurer of the Parish of Bossier he is Treasurer of the Consolidated Road District of the Parish of Bossier; that the total principal and interest requirements to be met by the Consolidated Road District of the Parish of Bossier during the year 1927, that is, the principal and interest of the bonds due on March 1st, 1927, and the interest due on September 1st, 1927, including the principal and interest on the bonds issued and sold by Road Districts 1, 2 and 3, will aggregate $122,807.50; that the total taxes levied and assessed against the property in said District to pay such principal and interest of said bonds, according to the assessment rolls, equal $125,825.27 and that, allowing for the deductions and [fol. 82] the expense of collecting said taxes, in his opinion the net amount realized from the imposition of said taxes for the year 1926 will hardly equal $122,000.00. That excluding the proceeds from the taxes levied and imposed for the year 1926, the Board has no funds available to meet the payment of principal and interest for the year 1927, other than $5,585.00, which represents the accrued interest and the premium received at the time of the sale of the bonds issued and sold by the Consolidated Road District of the Parish of Bossier.

(Def't's Ex. 7)

Mr. J. G. McDade and Miss D. W. Brownlee, being each duly sworn, testified by affidavit as follows:

The said J. G. McDade declares that he is the President of the Police Jury of the Parish of Bossier, State of Louisiana, and the said Miss D. W. Brownlee declares that she is the Clerk, pro tem, of the Police Jury of the Parish of Bossier, State of Louisiana; that R. B. Hill, the regularly elected Secretary of the said Police Jury is at the present time ill and confined in a hospital, and is unable to make this affidavit.

Both affiants declare that the Police Jury of the Parish of Bossier is the governing authority of Consolidated Road District of the Parish of Bossier, State of Louisiana.

Both affiants declare that the said Police Jury of the Parish of Bossier, State of Louisiana, did meet on Septem-[fol. 83] ber 14th, 1926, and having given due and public notice of said meeting by publication in the official journal of the Parish of Bossier, to-wit: "Bossier Banner" as required by law, and that at said meeting all complaints were received and heard and passed upon, and that neither the said St. Louis Southwestern Railway Company or the Shreveport Bridge & Terminal Company filed any protest or complaint at said meeting, all of which is more fully shown by reference to certified copies of the proceedings of said Police Jury held on said date which are hereto attached, and made part hereof, and marked "Exhibit A."

The exhibit "A" attached to the affidavit of J. G. McDade and Miss D. W. Brownlee corroborates the facts sworn to by these witnesses.

(D-8)

E. D. Taylor, being duly sworn, testified by affidavit as follows:

That he is the regularly elected and qualified Assessor of the Parish of Bossier; that as Assessor of said Parish it is his duty to prepare the assessment rolls of said Parish; that he is familiar with the boundaries of the Consolidated

Road District of the Parish of Bossier and that as Assessor of said Parish it is his duty to prepare the assessment rolls for said Consolidated Road District; based upon which the taxes are levied and imposed and are assessed and collected by the governing authority of said Road District. That the roll prepared by him for this purpose is not a special assessment roll, but is the general assessment roll [fol. 84] based upon which all ad valorem taxes are levied, assessed and collected for the Parish of Bossier, State of Louisiana, and the various other political subdivisions in the Parish of Bossier. That he, as Assessor, finally fixes the valuation of all property in said Parish of Bossier and in said Consolidated Road District, other than the public utilities located therein, which public utilities are solely under the jurisdiction of the Louisiana Tax Commission, and the values of such public utilities for assessment purposes are fixed by the Louisiana Tax Commission and are certified to him, as Assessor, by said Commission, such values to be placed upon the rolls prepared by him as Assessor; that in fixing the valuation of other property, he follows the rules and regulations laid down by the Louisiana Tax Commission, which rules and regulations are fully set forth in a report of the Louisiana Tax Commission for the year 1925, at pages 34 to 55 inclusive, and which rules and regulations were followed in making the assessment roll for the year 1926; that the tax payers of said Parish are permitted, under the law, to file a return on or before April 1st, of each year, listing their property and fixing the valuation thereof, and that he, as Assessor, then either approves or increases the value thus fixed by the tax payers and on and after the first of April makes up a list of all property subject to taxation in the said Parish, and that he followed this procedure in making the assessment rolls for the year 1926. That he, after completing the preparation of the list of all property assessable in said Parish of Bossier for the [fol. 85] year 1926, did notify the Parish Board of Equalization, and did publish a notice in the "Bossier Banner," the official journal of the Parish of Bossier, advising all tax payers that said lists were completed and that his lists were open for inspection and that the public Board of Equalization would meet for the period of twenty days subse-

quent to such notice to consider the equalization of all assessments in said Parish; that said Board did meet for a period of twenty days and that he, as Assessor, sat with said Board and that the said Board and he, as Assessor, did consider all of said lists thus prepared by him and did equalize the assessments of said Parish; that after the hearing before the Parish Board of Equalization had been completed, he did file said list with all other papers and documents having reference to the assessment for the year 1926 with the Louisiana Tax Commission, and that he and the Louisiana Tax Commission did then publish notice in the official journal of the Parish of Bossier, to-wit, the "Bossier Banner," and did post notices in other public places in said Parish for the time and manner provided by law, that the Louisiana Tax Commission would hear any and all complaints at its review of said assessments, which hearing was to be had at the City of Baton Rouge on August 12th, 1926.

That on August 12th, 1926 said affiant met the Louisiana Tax Commission and the Rolls were reviewed by the said Tax Commission and said affiant, and objections, if any, were heard and disposed of, and the Rolls were approved [fol. 86] by the Louisiana Tax Commission, and affiant was ordered and instructed to proceed to prepare such rolls.

That affiant then did return to the Parish of Bossier and advise the Police Jury of said Parish that his rolls were ready for inspection and the police Jury did then give notice in the time and manner required by law that it would meet as a Board of Reviewers on September 14th, 1926, for the purpose of considering any objections that might be urged to valuations as fixed for assessment purposes for the year 1926, and that, on said date, the Police Jury of the Parish of Bossier did approve said Rolls, after a public hearing.

Affiant shows that at the hearing before the Police Jury of the Parish of Bossier, the St. Louis & Southwestern Railway Company had the right, under the law, to appear and urge any objections to the valuations as fixed by the Louisiana Tax Commission for assessment purposes, and that the said Company did not appear before the Police Jury and urged no objection to the valuations as fixed by the Louisiana Tax Commission.

That subsequent to the hearing before the Police Jury, affiant filed with the Clerk of Court of the Parish of Bossier, on October 6, 1926, Assessment Rolls for the year 1926. Copy of said Rolls was filed with the Sheriff and Ex-Officio Tax Collector, and also with the Auditor of Public Accounts of the State of Louisiana.

Affiant further shows that in assessing taxable property in the Parish of Bossier for the year 1926, affiant followed [fol. 87] and was guided by the laws of the State of Louisiana, and particularly the rules and regulations of the Louisiana Tax Commission, which rules and regulations are specifically shown in said report of the Commission for the year 1925, as above set forth.

That said affiant did not value all lands in the Parish at a fixed valuation per acre, but that the valuations of the lands varied in accordance with the location and the character of the lands—farm lands being valued according to the classifications as fixed by the Commission, and town property being valued usually at a higher rate, and suburban property being valued at a different rate; that these valuations were made in good faith and with a view of fixing the cash valuation of the property as provided by the Constitution and laws of the State of Louisiana, and with the idea of equalizing the valuation of all classes of property according to the class, and that affiant declares that said valuations were arrived at only after investigation and that said valuations were based on information as to values, which affiant was able and did secure prior to the final filing of the Roll.

Affiant further declares that in the year 1923, the Police Jury of the Parish of Bossier employed Stoner, Gallagher & Gross, Inc., expert land valuers, to value and appraise for assessment purposes all of the lands in the Parish of Bossier, except public service corporations; that said Stoner, Gallagher & Gross, Inc., spent two years on this work at an expense to the Parish of Bossier aggregating [fol. 88] $25,000.00; that the valuations fixed by these experts were accepted by affiant, as assessor, the Police Jury of the Parish of Bossier and the local Board of Equalization.

That the assessments of 1924 were based upon the report made by these experts and that the assessments of 1925 and

1926 were likewise based upon this report, making allowances for any increase or decrease in valuations that had occurred during the period subsequent to 1924.

Affiant now shows that the St. Louis Southwestern Railway Company owns one (1) lot in Bossier City and a tract of land containing 4.66 acres in said Bossier City, which affiant is required to assess under the law, and that said property is assessed on exactly the same basis as other adjacent property is assessed in said City.

Affiant further declares that he has been Assessor of the Parish of Bossier for seven years and that during said years he, as Assessor, has assessed taxes against the lands located in Road Districts 1, 2 and 3 of said Parish, including the taxes against the property belonging to the St. Louis Southwestern Railway Company, and the Shreveport Bridge & Terminal Company, and that said assessment was never questioned by the said Railroad Company, and the taxes thereon were paid.

Affiant further declares that the assessment for the year 1926 of the property of St. Louis Southwestern Railway Company and the Shreveport Bridge & Terminal Company, [fol. 89] against which the tax of seven mills on the dollar has been extended on the rolls, is the same assessment against which all state, parish and other taxes have been extended upon the rolls.

Affiant further declares that he attaches hereto and marks "Exhibits A, B and C", copies of the assessment rolls, showing the assessments of the property of the St. Louis & Southwestern Railway Company, and that the property of the Shreveport Bridge & Terminal Company is likewise assessed, as per copy attached marked Exhibit "D", the said Exhibit "A" being copy of the instructions received by him from the Louisiana Tax Commission concerning the assessment of the St. Louis & Southwestern Railway Company's property.

The Complainant made timely objection to the conclusions of law made in the affidavit of E. D. Taylor, and the testimony was admitted subject to the objection.

Exhibits B and C attached to the affidavit of E. D. Taylor, show the following described property assessed to the St. Louis Southwestern Railway Company:

[fol. 90] EXHIBIT TO TESTIMONY OF E. D. TAYLOR

Description of property		Actual value of al lands, lots or parcels of land, and all improvements thereon as fixed by the La. Tax Commission for all assessment purposes	Road district No. 1, 2½	Cons. road district No. 7, tax
4.06 A. E. of gravel road, W. of Cotton Belt Main Line, in S. E. ¼ Sec. 20 T. 18, R. 13, Lot 1 Blk. of S. E. ¼ & N. E. ¼ of S. E. ¼ 5, McCormick Annex, Subur. 4 A. 1670, 1 lot 200.				
17.74 Mi. Main Line @ $22,000	$390,280.00			
4.34 Mi. Side & Spur @ 5,000	21,700.00			
Real Estate	1,620.00			
Rolling Stock	167,870.00			
Lot	200.00			
	$581,680.00	$81,680	1,454.20	4,071.76

Description of property			Consol. road district tax 7 mills tax	Road district No. 3 3½ mills
18.53 Mi. Main Line @ $22,000	$407,920			
2.22 Mi. Side Track @ 5,000	11,100			
	$418,760	418,760	2,931.32	1,465.66

[fol. 91] Exhibit "D" attached to said affidavit of E. D. Taylor, shows the assessment of the Shreveport Bridge & Terminal Company of property described as ½ of the Bridge across Red River, at an assessed valuation of $156,070.00.

Exhibit No. 9, filed by the defendants, is the Ninth Annual Report of the Louisiana Tax Commission for the year 1925, and is a bound volume, a copy of which will be filed with the transcript in this case, but not incorporated therein.

Complainant made timely objection to the statements of law made in the Report of the Louisiana Tax Commission, for the reason that the laws themselves will best show what their provisions are.

(Deft. Ex. 10)

James M. Henderson, Clerk of Court and Ex-Officio Recorder for Bossier Parish, Louisiana, being duly sworn, testified by affidavit as follows:

That he is the Clerk of Court and Ex-Officio Recorder of the Parish of Bossier, State of Louisiana, and has been for more than twelve years, and that E. D. Taylor is the duly qualified Assessor for the Parish of Bossier, State of Louisiana, and that the said E. D. Taylor, Assessor for said Parish, filed in the Clerk of Court and Recorder's Office his assessment rolls for the year 1926 on the 6th day of October [fol. 92] 1926, and that your affiant issued his certificate that the same had been filed on that date on the 6th day of October, 1926.

(Deft. Ex. 11)

J. G. McDade, E. D. Taylor, J. H. Nattin, V. V. Whittington, being each duly sworn, testified by affidavit as follows:

Said affiant J. G. McDade declared that he is President of the Police Jury of the Parish of Bossier, State of Louisiana, and that he has been a resident of the Parish of Bossier for at least sixty (60) years;

Said affiant E. D. Taylor declared that he is the Assessor of the Parish of Bossier and that he has resided in said Parish at least thirty-four (34) years;

Said affiant J. H. Nattin declared that he is the Sheriff and Ex-Officio Tax Collector of the Parish of Bossier and that he has resided in said Parish for the past fifty (50) years; and

Said affiant V. V. Whittington declared that he is Parish Treasurer of the Parish of Bossier, and that he has resided in said Parish over thirty (30) years; and

That they are familiar with the conditions existing in [fol. 93] the said Parish of Bossier.

Affiants declare that the map attached to the affidavits of Mr. J. G. McDade and Miss D. W. Brownlee, and marked "Exhibit S," correctly delineates the Consolidated Road District of the Parish of Bossier, and that the railroad of

the St. Louis and Southwestern Railroad Company, as shown on said map, running from Bossier City through Benton, Hughes Spur and Plain Dealing up to the Arkansas State Line at Arkana, is correctly located on said map.

Affiants declare that the Western Section of said territory lying north of Bossier City, through which said railroad has been constructed, is alluvial land formed by the Red River. That the eastern section of said territory is comprised partly of alluvial lands and partly of hill lands; that some years ago Road District No. 1 of the Parish of Bossier constructed a road from Bossier City to a point one (1) mile west of Benton, which is shown by a red line on said map from Bossier City to Benton and one (1) mile west thereof, and that this road was hard-surfaced. That there have not been constructed any hard-surfaced roads in the said Consolidated Road District of the Parish of Bossier north of Benton, and that as a result of this condition the land owners and residents of said District residing on the eastern and western sides thereof have not been able to readily reach the St. Louis and Southwestern Railway Company's railroad for the purpose of transporting either their persons or their products over said railroad.

Affiants declare that as a matter of fact the residents [fol. 94] of the north western portion of said District have been transporting their products across the Red River, paying ferriage therefor, so as to reach the hard-surfaced roads in the Parish of Caddo, and to reach the City of Shreveport, which is the largest city in that territory and the main trade center of North Louisiana, and that they have been shipping their goods over the railroad belonging to the Texas & Pacific Railway Company, which runs through the Parish of Caddo from the Arkansas line to the City of Shreveport, and which is a railroad line competing with the said St. Louis and Southwestern Railway Company.

Affiants further declare that the property owners in the Northeastern and Eastern portions of said Consolidated Road District, north of Bossier City, have not availed themselves of the use of said railroad belonging to said St. Louis and Southwestern Railroad Company, but on the contrary

have transported their products across Bodcaw Bayou into Webster Parish, and into the town of Minden, and have patronized the railroad line owned by the Louisiana & Arkansas Railroad Company which traverses the Parish of Webster, which railroad runs from the Arkansas line through the Western portion of Webster Parish to Minden, and from Minden to the City of Shreveport, which railroad is a competitor of the St. Louis and Southwestern Railway Company.

That the Road Districts in the lower portion of said Parish had constructed hard-surfaced roads, and that one of the principal objections of the Consolidated Road Dis- [fol. 95] trict, and the creation of the said Consolidated Road District, was to construct roads in the northern portion of the said Consolidated Road District of the Parish of Bossier, running north from Benton to the Arkansas line, and East and West from Benton, Hughes Spur, and Plain Dealing, in order that the people residing in the Northeastern and Northwestern portions of said District might reach the principal trading points in said District, namely, Plain Dealing, Hughes Spur and Benton, and might be able to reach the only railroad running through the northern portion of said District, to-wit, the St. Louis and Southwestern Railway Company, and thereby transact their business in the said Consolidated Road District of the Parish of Bossier, and reach the City of Shreveport through the said Consolidated Road District over the railroad traversing said District and running from the Arkansas line to Bossier City.

That all of said affiants are public officials; that they were interested in the formation of said Consolidated Road District, and participated therein, and consulted with the Police Jury and the taxpayers in the formation of said Road District and in carrying out the plan for the construction of hard-surfaced roads in said District.

Affiants further declare that in the formation of said Consolidated Road District, and the location of said Roads, the Police Jury of the Parish of Bossier had in mind the creation of a District which would benefit all of the taxpayers equally, and would benefit the whole of said District, [fol. 96] and build up and improve the value of all of the property in said District. Affiants declare that in truth

and in fact in the Northern portion of the District, through which runs the railroad line belonging to the St. Louis and Southwestern Railway Company, a greater mileage of roads will be built and more money, in proportion of the assessed valuation, will be spent than in the remainder of said District.

Affiants declare that this plan was adopted prior to the creation of the District and the voting of the tax, and that all taxpayers knew of the plan to be followed in the construction of said roads.

Affiants further declare that they are firmly of the opinion and belief that one of the prime beneficiaries of the construction of said road system will be the St. Louis and Southwestern Railway Company; that the construction of said roads will bring to the said St. Louis and Southwestern Railway Company freight that heretofore has been transported over other railroads, in other Parishes, to-wit, the Louisiana & Arkansas Railroad, in the Parish of Webster, and the Texas & Pacific Railroad, in the Parish of Caddo; and that said St. Louis and Southwestern Railway Company will be further benefited in that said road will transport the bulk of the material and gravel to be used in the construction of said roads north of Bossier City.

And said affiants further declare that said plan will of necessity build up and improve the towns of Bossier City, Benton, Hughes Spur and Plain Dealing, which are the [fol. 97] principal shipping points on the said St. Louis and Southwestern Railroad in the Parish of Bossier, north of Bossier City.

(Deft. Ex. 12)

Edward Jones, being duly sworn, testified by affidavit as follows:

That he is employed by Whitney-Central Trust and Savings Bank of the City of New Orleans; that he buys municipal bonds for said bank; that he has been engaged in this business for about ten (10) years; that at the request of the Attorneys for the defendants in the suit of St. Louis & Southwestern Railway Company, complainant, versus J. H. Nattin, Tax Collector and Consolidated Road District

of the Parish of Bossier, Louisiana, he has examined the transcript of the proceedings covering the issues of bonds by Road Districts Nos. 1, 2 and 3, and Consolidated Road District of the Parish of Bossier, which transcript is attached to the affidavits of Mr. J. G. McDade and Miss D. W. Brownlee and is designated as "Exhibit 1" of the exhibits filed by the defendants in said cause, and that from his examination of such transcript he has found that the total amount required to pay the principal and interest maturing in 1927 upon the bonds of Road Districts Nos. 1, 2 and 3, and Consolidated Road District of the Parish of Bossier, is one hundred twenty-two thousand eight hundred seven and 50/100 ($122,807.50) dollars, an itemized statement showing the amount of principal and interest thus due being as follows:

[fol. 98] Road District No. 1

$3,000.00—Mature September 1, 1927 (Principal)	$3,000 00
Interest, 5%, March 1, 1927 and September 1, 1927	$7,750 00

Road District No. 2

$1,500.00—Mature September 1st, 1927 (Principal)	$1,500 00
Interest 5%, due March 1st, and September 1, 1927 on $39,500.00 outstanding	$1,975 00

Road District No. 3

$1,500.00—Mature September 1, 1927 (Principal)	$1,500 00
Interest 5% on $41,000.00 due March 1st, and September 1st, 1927	$2,050 00

Consolidated Road District of the Paris of Bossier

Maturities $1,389,500.00 issue (Principal)	$11,500 00
Interest at 4½% from March 1st, 1926 to March 1st, 1927, on $1,389,500.00	$62,527 50
Semi-annual Interest due September 1, 1927 on $1,278,500.00, at 4½%	$31,005 00
Total	$122,807 50

[fol. 99] Defendant then offered in evidence Exhibit No. 13, being a telegram from J. W. Bolton to Congressman James B. Aswell, under date of January 14, 1927; and Exhibit No. 14, purporting to be a reply from James B. Aswell to J. W. Bolton at Alexandria, Louisiana. The last two offerings of defendant being objected to by the complainant for the reason that they had not been sworn to.

These telegrams are reproduced in full, as follows:

(Defendant's Ex. 13)

Alexandria, La., Jan. 14, 1927.

Congressman James B. Aswell, Washington, D. C.:

Must learn immediately valuation of property St. Louis Southwestern Railroad as last determined by Interstate Commerce Commission in Louisiana and amount of same in Bossier Parish, if possible stop If above cannot be readily obtained then send valuation their branch line Lewiston Arkansas to Shreveport stop Also want present status this matter and railroads attitude to situation at present stop Need this data for important litigation coming up at once and ask you wire me collect to Alexandria Saturday all information you can obtain on above matter.

J. W Bolton.

[fol. 100] (Defendant's Exhibit 14)

150 NS BN 111 650VT. 1 67.
B Washington DC 220 P Jan 15, 1927.

J. W. Bolton, Alexandria, La.:

Interstate Commerce Commission advises St Louis Southwestern Railroad property in Louisiana present value of lands used for common carrier purposes is two hundred seventeen thousand six hundred forty two dollars In Bossier parish present value of lands used for common carrier purposes is thirty seven thousand six hundred sixty seven dollars structures cost of reproduction new is one million forty two thousand nine hundred forty five cost of reproduction less depreciation is eight hundred seventy thousand nine hundred six date of appraisal is June thirty nine-

teen hundred fifteen carriers protest commission's valuation reproduction cost and land values are tentative and subject to change upon hearing stop mailing you official statement from commission Monday

J. B. ASWELL. 3:27 P.

[fol. 101] In United States District Court

Agreement on Narrative Evidence—Filed May 16, 1927

Milling, Godchaux, Saal & Milling, Attorneys at Law, Whitney-Central Building, New Orleans

Robert E. Milling, Emile Godchaux, Irving R. Saal, Roberts C. Milling, Raymond H. Saal, Robert E. Milling, Jr., Eugene D. Saunders, Leon H. Rittenberg, Joseph S. Querriero, Wilbur W. Heard.

Cable Fosmigos. Legal Telegraphic Code

File 9081

May 10, 1927.

Mr. W. S. Wilkinson, c/o Wilkinson, Lewis & Wilkinson, Slattery Building, Shreveport, Louisiana.

Dear Sir: Confirming our telephone conversation of today, I have examined the narrative statement of the evidence submitted in the matter of St. Louis & Southwestern Railway Co., v. Nattin, et al, and I feel that you have covered the essential features. As you point out in your letter to me, the only things not covered are the exhibits attached to the affidavits of McDade and Miss Brownlee, but the affidavit itself states the essential facts and I do not see any necessity of burdening the record with a statement of the contents of those exhibits.

As I stated to you over the 'phone, should it develop that any particular fact, not covered in the narrative statement and included in these exhibits, is required, then we will resort to the original transcript.

Thanking you for your courtesy in this matter, I am

Very truly yours, R. C. Milling.

RCM:ME.

[File endorsement omitted.]

[fol. 102] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION — Filed March 15, 1927

DAWKINS, J.:

Complainant, a Missouri corporation, brought this suit to enjoin the collection by the sheriff and ex-officio tax collector of Bossier Parish, Louisiana, of a tax levied by the police jury of said parish, for the payment of principal and interest on certain bonds issued by a consolidated road district therein. The grounds for injunction are that the territory within said district "includes practically all of the territory within the parish of Bossier * * *", and while small portions of the parish were omitted, this was done as a "pretense and sham * * * for the purpose of evading Art. 14, Sec. 14, of the Constitution of Louisiana, [fol. 103] which prohibits the creation of a road district which shall comprise the whole territory of the parish;" that the said ordinance levying the tax imposes seven mills on the property of complainant for the year 1926, which is two mills more than is necessary for the payment of the principal and interest of said bonds falling due in that year, and complainant is informed and avers that said two mills is for the purpose of paying the amounts becoming due in 1927, all in violation of Act No. 118 of 1921 and the Constitution of the state which limits the amount to be collected to a sum sufficient to discharge the obligations maturing in the year in which the tax is levied; that the market value of its property will not be increased and that it will derive no benefits from said tax or the construction of said roads, but on the contrary, will actually be injured because one of the principal roads to be constructed will parallel its railroad from the Arkansas State line to Bossier City, and it will have the competition of bus and truck lines thereon, which will take from complainant much of its passenger and freight traffic between said points, thus taking its property without due process and denying it equal protection under the law, contrary to the fourteenth amendment to the Federal Constitution; that it will be discriminated against for the reason that its property is assessed" at its practical cash value, whereas the farm

lands and other property in said district are assessed at a much lower rate, also in violation of Section 1, Art. 14 of the Constitution of the United States; that the portion of its line within the Parish of Bossier forms a part of an interstate railroad and said assessment levies an unjust burden [fol. 104] upon interstate commerce, in violation of Sec. 6, Art. 1 of said Constitution; and that the Act of the Legislature, (No. 118 of 1921) authorizing the creation of said road district, makes no provision for a hearing at any time or place by any tax payer as to the validity or amount of taxes to be assessed against property located within said road district or of the benefits to accrue thereunder, likewise in violation of the Fourteenth Amendment to the Federal Constitution.

Complainant also sues on behalf of the Shreveport Bridge & Terminal Company, a Louisiana corporation, which is assessed with the tax, upon the allegation that it owns all of the capital stock of said Bridge Company "and to all intents and purposes is the owner of said Shreveport Bridge & Terminal Company", and has a contract with said Bridge Company "under which and by which it contracts and agrees to pay all deficits which may occur in the operation of said * * * Company, a copy of which contract is attached hereto and made a part hereof".

A rule nisi was issued and the matter heard before this court at New Orleans, Louisiana, on the — day of January, 1927. At the hearing respondent appeared and filed, first, a motion to dismiss, and secondly, an answer to the rule. In the motion to dismiss it was averred that the petition on its face disclosed that no demand had been made upon the Shreveport Bridge & Terminal Company to institute the complaint as required by equity rule No. 27, and in the alternative, if it should be held that complainant has an interest in the property of said company sufficient to institute [fol. 105] this proceeding said Bridge Company is necessary party and this court should order that it be joined herein; second, that the allegations of said complaint are too vague and indefinite to require respondent to answer; and third, that the complaint does not disclose a ground for equitable relief.

Subject to the motion to dismiss, respondent answered, alleging that the complainant has no right of action under the laws of the state, (a) for the reason that if such right

had ever existed, which was denied, same had prescribed and perempted; (b) that the said tax was levied and imposed for the sole and only purpose of paying the principal and interest of a bond issue of $1,600,000.00 by the Police Jury of said parish as the governing authority of said road district, pursuant to the Constitution and laws of the state of Louisiana, after due notice and publication thereof for a period of thirty days, and approval by a majority vote of the qualified tax payers of said district, the result of which was duly promulgated; that more than sixty days elapsed from the promulgation of the result of said election wtihout any attack being made thereon and the said bonds had been on March 9, 1926, acquired by the Commercial Securities Company, Caldwell & Company and the Whitney Central Trust & Savings Bank; that the said bonds contained the recital that all the provisions of law had been complied with as required by Acts 33 and 46 of the year 1921, and on August 10, 1926, the Police Jury, as the governing authority for said district, had levied said tax of seven mills upon all the property in said district, a copy of the ordinance levying the same having been published in the official journal of said parish on August 19th to September [fol. 106] 23, 1926, inclusive, all of which was done prior to the institution of this suit by complainant; (c) That in paragraph "n" of Section 14, Art. 14 of the said Constitution of 1921, and Secs. 33, 34, 35, 42 and 43 of Act 46 and Sec. 11 of Act 118 of the Legislature of Louisiana for the year 1921, the right of persons to resort to the courts "for the purpose of questioning the validity of the election, the bonds or the taxes levied, imposed and assessed for the purpose of paying said bonds in principal and interest, was limited to sixty days from the date of the promulgation of the result of the election", which respondent pleaded in bar of complainant's right to institute this suit; (d) That sec. 43 of Act 46 of 1921 provides:

"If any resolution be adopted or proceeding had, more than thirty (30) days after the promulgation of the result of the election, no contest, action or proceeding to question the validity or legality of such resolution or proceeding so adopted, shall be begun in any Court by any person for any cause whatsoever, after the expiration of thirty (30) days from the date when the resolution was adopted, or proceeding had."

That more than thirty days had expired from the promulgation of the result of said election before this suit was brought, and respondent also pleaded the same in bar of this action; (e) That the assessment upon the tax rolls and the valuation of complainant's property was fixed by the Louisiana Tax Commission, after due notice and hearing, as well as that of other tax payers; that said assessment rolls were filed with the Clerk of the Court of Bossier Parish, on October 6, 1926, and that under Act No. 97 of the Legislature of 1924 the complainant and all other persons making return of property for taxation had thirty days thereafter within which to contest the correctness or legality [fol. 107] of said assessment, but that complainant did not avail itself of said right and the same had prescribed, which prescription of thirty days respondent also specially pleaded.

Respondent then answered the bill seriatim, admitting the jurisdictional averments, but otherwise denying the illegality or irregularity of the proceedings by which the property was assessed and the tax levied or that the said road district had been created in bad faith.

As to the motion to dismiss, even if we should find that the railroad company had no right to sue in behalf of the Bridge Company, it would still have a standing to assert its own case. The bill, in our opinion, is sufficiently definite to permit defendant to urge his defense and the plea of want of equitable relief will be disposed of along with the merits.

The issues involved may, therefore, be disposed of by answering the following question:

(1) Did the inclusion of all of the Parish except a small portion lying on the north and east sides, amounting to some 25,000 acres, have the effect of invalidating the tax proceedings?

(2) Did the levying of a tax upon the assessment of 1926 to pay installments of principal and interest of the bonds falling due March 1, 1927, violate the Constitution and statutes of the State?

(3) Will the complainant be injured or benefitted in its property rights and has it shown any standing to complain

on that score under the constitutional guaranty of equal protection under the laws of the State?

(4) Has complainant been discriminated against in the [fol. 108] matter of assessment and if so, can it be heard to complain at this time?

(5) Does the tax impose an undue burden on interstate commerce contrary to the Federal Constitution?

(6) Will the fact that the tax to be paid by complainant will be devoted to building a highway over which vehicles competing with it for business will be allowed to operate, have the effect of depriving complainant of its property without due process of law under the Fourteenth Amendment to the Constitution of the United States?

(7) Does the Act 118 of 1921, carrying into effect the provisions of the Constitution of the state of 1921 afford it an opportunity to be heard on the question of benefits to its property and if not, is the nature of the tax such as to entitle it to such hearing?

(1) With respect to the first question as to whether the omission of a small portion of the parish from the road district has had the effect of invalidating the tax as an "obvious" attempt to evade the constitution and statute, the Legislature at its session in 1924, submitted an amendment to the constitution of 1921, which was duly adopted by a vote of the people, omitting the former provision prohibiting the inclusion of the whole of a parish within a road district, the amendment in question reading as follows:

"The Legislature may, by general law, authorize the Police Juries to create Road Districts and Sub-Road District, comprised of territory either wholly within a Parish, or partly within two or more Parishes."

It is true that this was not an act of the Legislature which could be construed as a repeal of the provisions of Act No. 118 of 1921, but it is significant that the method of adopting the amendment was by a proposal of the Legislature in [fol. 109] which two-thirds of its members had to concur and the point, under the circumstances, cannot be said to involve any question of state policy. In any event, it is

sufficient to say that even as the law formerly stood, it was left to the discretion of the police jury as to just how much of the parish less than the whole should be included in the road district, just so long as the whole was not embraced. The line of complainant's road, as shown by the map attached to its bill, runs from the north end of the parish in a southerly direction, through the western portion thereof, to the city of Shreveport, and the territory omitted is some miles away on the east and northern edges of the parish, in such manner that it is clear that there is no indication that the police jury "extended" the limits so as to embrace complainant's property. There is no substantial evidence to show any bad faith on the part of the police jury, and since the matter had to be determined by that body, the court cannot substitute its own judgment therefor so long as there has been no violation of the constitution and statutes. Besides, this matter involved purely a local law, as to which we think, if there was any irregularity or illegality, same was cured by the prescription or peremption of sixty days' provided by paragraph "n" of Sec. 14, Art. 14 of the state Constitution. Hardin vs. Police Jury of Vernon Parish, 155 La., 899; Roberts vs. Evangeline Parish School Board, 155 La. 331.

(2) It is shown that the bonds were all dated March 1st, 1926, and that the interest thereon was payable semi-annually on the first days of March and September of each year. Therefore, the first payment of interest had to be made on September 1, 1926, and the second on March 1, [fol. 109a] 1927. The court will take cognizance of the fact that assessments of property in the state of Louisiana are made in the spring and summer of the year in which taxes are collected and that no collection of taxes is made until the rolls are filed in the fall. Hence it was not possible to levy and collect the taxes to pay at maturity the installment of interest falling due on March 1, 1927, upon the tax roll of that year. What the police jury did was to levy sufficient taxes upon the assessment of 1926 to pay the interest maturing September 1, 1926 and March 1, 1927. We do not believe that the language of the Constitution and of the statute, which are practically the same, providing that

the "Subdivisions shall impose and collect annually, in excess of all other taxes, a tax to pay the interest accruing annually or semi-annually, and the principal falling due each year" is susceptible of the construction that the money collected upon the rolls of a particular year must be devoted solely to the payment of amounts maturing within that calendar year. Both the framers of the constitution and the members of the Legislature, it must be assumed, were aware of the facts above related with respect to the assessment and collection of taxes and that circumstances might be such that the principal and interest, since the latter was expressly permitted to be made payable semi-annually, would mature just in the manner and at the time as were adopted in this instance, and that it would not be possible to timely collect on the assessment of any year the money to pay installments falling due from, say the first of January to the filing of the tax rolls. It is not contended, and as a matter of fact there has not been imposed a greater tax upon the assessment of the year 1926 than was sufficient to pay the principal and interest upon the bonds maturing [fol. 110] within the period of one year. In other words, the burden of the tax payer for the year 1926 is no greater than if the interest had been payable annually and the levy of 1926 had been made to pay the interest maturing at the end of the year. There had to be a beginning and hereafter and until the bond issue is discharged the tax payer will no doubt pay the principal and interest as they become due.

(3) (6) (7) Questions 3, 6 and 7 will be considered together. They involve the issue as to whether or not the taxes are of such a nature that the complainant may raise the question of benefits and if so, was it afforded an opportunity to be heard thereon under the equal protection and due process clauses of the Federal Constitution. These identical questions have been so fully covered by the recent decision of the Court of Appeals for this Circuit in the case of Wight vs. Police Jury, 264 Fed. Rep. 707, that we quote at length from its disposition of the matter, beginning on page 708, and which we think is a complete answer to complainant's contention, to-wit:

"Article 292 of the Constitution of Louisiana (which corresponds with Sec. 14 Art. XIV of the Const. of 1921),

as published after the convention of 1913, provides for the division of parishes into road districts, and defines the taxing and bond-issuing capacity of the districts. Such legislation as is necessary to make the constitutional provisions effective is provided by Act No. 183 of 1914 and preceding statutes. The Constitution provides that 'Police Juries of this state may form their respective parishes into road districts.' No provision is made by the Constitution or a statute for notice to taxpayers of contemplated action by the police jury in the formation of districts, and in none of the cases under consideration was notice given. Provisions are made for notice of bond and tax elections, and for publication of the result, and the terms of the law have, in these respects in each instance been observed.

It is contended that the law as written and administered is unconstitutional because the law does not require notice, [fol. 111] and no opportunity is in fact given the taxpayers to be heard on the questions of the necessity or advisability of the creation of a road district, nor as to boundaries, nor as to whether property to be included would be benefitted, nor as to the rate and duration of the tax, or the amount of the bonds.

Communication, transportation, and commerce are distinguishing elements of civilization. To their development highways are essential. The construction and maintenance of good roads has been accepted universally as a function of government. In the United States there was an early recognition of the right of the general government to construct, or aid in the construction of national highways; but the duty of providing roads was primarily in the states, and in the states the duty remains.

After the success of the steam railroads was demonstrated, the attention of the federal and state governments was, for a number of years, especially directed towards their development. Aid was extended by the United States, by the states, by counties, parishes and municipalities. Though these highways have, ordinarily, been privately owned, the right of the state to levy taxes and appropriate property to help in their construction, and to authorize like action by their governmental subdivisions, has almost uniformily been sustained.

The extraordinary development of the country has brought about conditions under which the needs for transportation facilities can no longer be met by the railroads, and by the inferior dirt roads along which the pioneers have made their weary and wasteful way. Communities which have heretofore recognized the necessity of freeing themselves from the burdens of ignorance, and have provided public schools have come to realize that getting out of the mud is another essential step to that end. They realize that good roads are the complement of the school house; that isolation is not only an ally of ignorance, but of poverty; that prosperity in farming, trading, or manufacturing waits on transportation and communication.

A tardy recognition of these fundamental facts has brought about activity in the issue of bonds and the levy of taxes for road purposes. The national government is taxing all the people that great interstate highways may be constructed. States are taxing all their people that roads within the state may be built. In many states subdivisions [fol. 112] have been made, or recognized, and authority given to the taxpayers therein to supplement the efforts of the state and national governments. These subdivisions for roads do not, ordinarily, take the form of improvement districts, in which specific property receiving peculiar benefits is assessed in proportion to the benefits, but are based upon the idea that the tax payers are doing a proper part in the building up of systems of roads connecting all the sections of the country, and from which they, and everybody else, must derive a benefit.

In the state of Louisiana, the parish is primarly used as the unit for road purposes; but, lest this division of the state should not bring the necessary local cooperation and supervision, provisions have been made for dividing the parishes into road districts, which, under the terms of the Constitution, became governmental subdivisions of the state. The legislation as to these governmental units recognizes that the needs of the public with reference to roads may be more imperative in some parts of the state than in others. It recognizes, also, that in some parishes or parts of parishes the people may be willing to tax themselves for good roads, while in others the conditions may be such that the taxes cannot be levied.

The creation of road districts is vested by the Constitution in the police juries of the several parishes. It is a legislative authority doubtless well assigned. It may be assumed that the necessary action can better be performed by a body more familiar with local conditions and needs than by the state Legislature. No taxpayer, and no other person, would ordinarily have a right to interfere with or participate in the exercise of this power. It is conceivable that, even in defining the necessary governmental subdivisions, the people, acting in their primary power in the formation of their Constitution, or acting through their Legislature, or acting through a special legislative body, as in the present case, might lay off the lines in such an arbitrary, unjust way, with such a palpable purpose to destroy or confiscate property, that the protection of the Constitution would not be denied. But such a possible case is not immediately under consideration.

Complainant makes the proposition that the grant of power to the police jury violates the Constitution of the United States, because no provision is made by which he, as a taxpayer, may be heard with reference to the advisability [fol. 113] of action under the authority, or in the manner in which the authority is to be exercised. There is no constitutional requirement of special notice to any particular individual of contemplated action of a general nature by a governmental body exercising general legislative or administrative functions. The Taxpayer in a proposed road district had no more right to notice of a division of the state by the proper authority into road districts than to notice of the creation of a new parish or of the division of the parish into justice wards.

The governmental functions are carried on in a general way. The forces which exist to compel conformity of public action to public opinion are open to everybody. Except in those cases in which action is contemplated directly affecting the right of an individual, as distinguished from action affecting the public generally, no person has more right to specific notice than all other persons. It is answered that all people interested in public affairs will acquire a knowledge of what is taking place among those to whom the conduct of public affairs has been trusted. And so long as the officers are acting within their authority, redress for improper conduct is political, instead of judicial.

There are certain classes of improvement districts, not supported by direct taxation, and with reference to which definite rules for determining benefits and assessments have not been prescribed by the law, where the rule may be different. Drainage, irrigation, sewerage, and street-paving districts may be of this character. In districts of this kind, the improvement may be general and the expense met by general taxes, or the improvements may bring general public benefits and also direct benefits to particular property, and the expense be met by general taxes and specific assessments, or the direct benefits to particular property may be so great, as compared to the general benefits, that equity is approximated by direct assessments in proportion to these direct benefits.

In those cases in which improvement districts are formed for the direct benefit of the property within the district, and the method of meeting the expenses of the improvement is to determine the specific benefits and to fix upon each property owner an assessment in *pro*portion, and where the law designates no method of determining the benefit and assessment other than by a reference to some commission or other tribunal, a matter of fact is presented directly involving the property rights of individuals, and [fol. 114] each person affected must have an opportunity to produce for consideration the facts pertinent to his individual case. If this opportunity is not given, even the fact that the assessment was fair may not meet the objection that the property owner is deprived of a constitutional right.

Doubtless the laws could provide for road districts, in which improvements would be made for the benefit of specific property and the improvement met by assessments against such property. The Constitution and statutes of Louisiana, however, make no provision for such improvement districts. The districts under consideration are not of this character. They are special taxing districts for the general good. They enable the construction of good roads from which every person in the state may be expected to receive some direct or indirect benefit. To undertake to apply such government activities the rules which are invoked with regard to drainage, irrigation, or other improvement districts of that character would be to entirely destroy the possibility of efficient governmental action."

It is urged by complainant that the recent decision of the Supreme Court of the United States in the Archer County case, —— —— vs. —— ——, —, U. S., —, is contrary to this ruling of the Court of Appeals. However, the two cases are easily distinguishable. In the Archer County case the power to initiate proceedings for the levying of the road tax therein involved, was vested in a few tax payers, who, in their petition were given the right to define the district, fix the amount, maturity of the tax, etc. and when submitted to the County Commissioners the latter had no option but to order an election. If carried by vote of the property taxpayers entitled to vote, then the bonds were issued and the tax levied accordingly. The Court simply held that this was in effect the abdication of its authority by the Legisla- [fol. 115] ture and the vesting of unlimited power in the petitioning taxpayers without opportunity to nonconsenting and nonvoting taxpayers to be heard. The proceeding was in no wise similar to the one here. It is settled, in fact conceded, that the Legislature itself might impose the tax without hearing on the part of anyone, and we think it equally true that it may vest that power in one of its municipal subdivisions like the police jury or governing body of a parish. Under the Constitution and laws of Louisiana the police jury is made the governing authority for road districts and the duties of defining the district, fixing the amount and duration, interest, etc. of the bond issue as well as the levying of a tax to pay the same, is intrusted to it. The fact that it must have the approval of the property taxpayers does not, in our opinion, affect its governmental status as a subdivision of the state. In the present case we think the police jury complied with all of the requirements of the constitution and laws of the state, and in view of the nature of the proceeding it is not subject to the objection urged in the Archer County case.

The Constitution and statutes of the state, for a period of sixty days after the promulgation of the result of the election, afforded the complainant the right to attack the bond issue and tax for the payment thereof "for any cause" but thereafter "The authority to issue the bonds, the legality thereof and the taxes necessary to pay the same shall be conclusively presumed and no court shall have authority to inquire into such matter." It has been held by the Su-

preme Court of this state that this provision affords ample opportunity to be heard in the courts and if not exercised the right is forever lost. Hardin vs. Police Jury and Rob- [fol. 116] erts vs. Evangeline School Board, supra; Brock vs. Police Jury, 159 La. 66; Fontenot vs. Miller Gravity Drainage Co. District, 159 La. 302; Chiara vs. La Fourche-Terre Bonne Drainage District, 159 La. 422; Henderson Land & Planting Company vs. Police Jury, 159 La. 731. A similar view of the matter has been pronounced by the Supreme Court of the United States in Davidson vs. New Orleans, 96 U. S., 616, from which we quote, beginning at page 619, as follows:

"Whenever by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be of the whole State or some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceeding cannot to be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

(4) The assessment laws of the state afford taxpayers full opportunity to be heard upon the valuation and amount of their assessments. In fact, public service corporations like the complainant, are assessed, after full hearing if desired, by a state board known as the Louisiana Tax Commission which presumably is not influenced by local conditions. For thirty days after the filing of the final assessment rolls, the taxpayer is permitted to go into the courts for the purpose of contesting his assessment and if not done within that time, then he is expressly precluded from doing so thereafter. Act 97 of 1924. We think this provision reasonable for the state is entitled to fix some time after which the right to collect taxes for its own alimony and that of its subdivisions will be set at rest, and unless the provision is [fol. 117] unreasonable we see no reason why anyone should have a right to complain if they fail to avail themselves of that privilege. Se- authorities cited above.

(5) We are of the opinion that the contention that the taxes in question imposed an undue burden on interstate commerce is without merit. The same argument could with equal force be applied to any tax levied upon the physical property of a common carrier located within the state or within one of its taxing districts. Besides, both as to this question and the one immediately preceding, complainant has alleged its willingness to pay the ordinary state and parish taxes upon the basis of this same assessment and gives us its reason for not going so the refusal of the tax collector to accept the same.

For the reasons assigned we think the preliminary injunction should be denied.

A decree in accordance with these views may be presented.

Done and signed at Shreveport, Louisiana, this the 12th day of March, A. D., 1927.

Ben C. Dawkins, U. S. D. J.

[File endorsement omitted.]

[fol. 118] In United States District Court

[Title omitted]

Decree—Filed April 1, 1927

This cause came on to be heard at this time and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the rule to show cause herein issued be recalled, the application for a preliminary injunction be refused, the motion to dismiss the bill of complaint be sustained, and the bill of complaint be dismissed at the cost of the complainant, together with statutory damages of ten per centum (10%) upon the amount of the taxes in principal and interest, the collection of which is herein sought to be enjoined, as fees allowed the attorney for the tax collector, J. H. Nattin, Defendant.

Done and signed this 1st day of April, 1927.

Rufus E. Foster, Circuit Judge. Ben C. Dawkins, Louis H. Burns, Judges.

[File endorsement omitted.]

[fol. 119] IN UNITED STATES DISTRICT COURT

MOTION FOR APPEAL—Filed April 1, 1927

[Title omitted]

Now comes the Plaintiff, St. Louis Southwestern Railway Company through its undersigned attorneys, and feeling itself aggrieved by the interlocutory decree of this Court refusing to grant the complainant a temporary writ of injunction or restraining order directed against defendant, shows that the said decree is contrary to the law and the evidence and that it is entitled to appeal therefrom.

Complainant further shows that pending said appeal irreparable injury may be inflicted upon complainant and its property which is used in interstate commerce unless a supersedeas be entered herein and a restraining order be directed to defendants restraining them from proceeding with the collection of the seven mills road tax of the Consolidated Road District of Bossier Parish, Louisiana, until the final disposition of this appeal.

In connection with this petition complainant herewith presents its assignment of errors.

Wherefore, petitioner prays that an appeal be allowed it from said decree to the Honorable Supreme Court of the United States and an order of supersedeas will be entered herein and a restraining order be issued directed to defendants restraining them and each of them from further proceeding with the collection of the seven mills road tax of the Consolidated Road District of Bossier Parish, Louisiana, sought to be enjoined in this proceeding, pending the final disposition of this appeal, on petitioner giving bond in such amount as may be fixed by the order allowing this appeal.

Wilkinson, Lewis & Wilkinson, Attorneys for Complainant.

[fol. 120] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed April 1, 1927

Considering the above and foregoing motion for appeal filed by the plaintiff herein, it is ordered that the plaintiff

be granted an appeal returnable to the Honorable Supreme Court of the United States on the 1st day of May, 1927, and that an order of supersedeas be entered herein and a restraining order or temporary injunction be issued directed to the defendants, J. H. Nattin, Tax Collector and the Consolidated Road District for the Parish of Brossier, Louisiana, restraining, enjoining and prohibiting them and each of them from further proceeding with the collection of the special road tax of seven mills assessed against the property of the St. Louis Southwestern Railway Company and the Shreveport Bridge & Terminal Company on the tax rolls for the year 1926 by the Consolidated Road District No. 1 of Bossier Parish, Louisiana, said restraining order to remain in full force and effect, pending the final hearing and disposition of this appeal on appellant giving bond in the amount of Twenty Thousand Dollars with good and proper sureties and conditioned as the law requires, and further conditioned on the payment by complainant of any and all taxes, accrued or accruing, with interest thereon, in favor of respondents, and against appellant's property in the said Consolidated Road District pending the final determination of this cause, together with interest on money which may be borrowed by respondents as a necessary result of the restraining order herein granted, and any other damages suffered by respondents as a result of this restraining order in the event that the judgment and decree herein rendered should be affirmed on appeal.

Thus done and signed this 1st day of April, 1927.

Rufus E. Foster, Circuit Judge. Ben C. Dawkins, Louis H. Burns, District Judges.

[File endorsement omitted.]

NOTE.—(The above order having been allowed and signed in open Court with all parties to this litigation present, no Citation was necessary, hence none issued and served.)—W. B. Lee, Clerk.

[fol. 121] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 1, 1927

Now comes the appellant, the St. Louis Southwestern Railway Company, through its undersigned attorneys, and in connection with its petition for appeal says that in the record, proceedings and in the decree herein manifest error has intervened to the prejudice of appellant, to-wit:

1. The Court erred in finding that Act 118 of the General Assembly of Louisiana for the year 1921, authorizing the creation of defendant district and the levy of the tax herein in controversy, did not deprive complainants of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

2. The Court erred in finding that the Ordinance of the Police Jury of Bossier Parish, creating Consolidated Road District of the Parish of Bossier, did not deprive complainant of its property without due process of law in contravention of said Amendment.

3. The Court erred in finding that the Ordinance of the Police Jury of Bossier Parish, levying the tax against complainant's property herein complained of, did not unlawfully deprive complainant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

4. The Court erred in finding that the tax against complainant's lands was a general tax and not a special assessment.

5. The Court erred in finding that the failure of said Act 118 to give complainant notice and an opportunity to be heard upon the question of whether its lands would be benefited by the proposed improvement before said District embracing its property was created by the said Police Jury did not unlawfully deprive it of its property without due process of law and in contravention of said Amendment.

6. The Court erred in finding that the failure of said Act 118 to give complainant notice and an opportunity to be heard upon the amount of benefits to be assessed against its property on account of said improvement before said tax was levied, did not deprive complainant of its property without due process of law in contravention of said Amendment.

7. The Court erred in finding that Act 118, in providing that the question of the creation of said District and the issuance of the obligations for which said tax is levied should be determined by the owners of property within said District at an election in which Complainant was expressly excluded, did not deny complainant of the equal protection of the laws in contravention of said Amendment.

[fol. 122] 8. The Court erred in finding that the imposition under the authority of the State of Louisiana of the advalorem tax against the full value of the property of the Complainant and against but approximately one-half the value of other property in the District did not unlawfully deprive Complainant of the equal protection of the laws contrary to said Amendment.

9. The Court erred in finding that the collection of said tax under the authority of said State would not unlawfully deprive Complainant of its property without due process of law contrary to said Amendment.

10. The Court erred in failing to find that the improvements on account of which said tax is levied would not benefit complainant or its property, and in failing to find that the assessment of special taxes against Complainant's property to pay for the construction of a competing system of hard surfaced highways to the injury and damage to Complainant's interstate railroad business imposes an undue burden on interstate commerce in violation of Section 8 of Article 1 of the Constitution of the United States, and is a taking of Complainant's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

11. The Court erred in failing to find that said tax is grossly and palpably in excess of the benefits which Com-

plainant's property will receive on account of the proposed improvement.

12. The Court erred in failing to find that said tax arbit-arily imposes a grossly and palpably unfair, unjust, disproportionate and discriminatory burden upon Complainant as compared with other property owners in the District.

13. The Court erred in declining to follow the authority of the decision of the Supreme Court in the case of Browning vs. Hooper, 269 U. S., 396; 70 L. Ed. 330.

14. The Court erred in holding that the prescription periods of thirty and sixty days provided by Act 46 of 1921, Act 97 of 1924, Act 118 of 1921, of the Legislature of Louisiana, and Section 14 of Article 14 of the Constitution of Louisiana are applicable to the issues in this case.

15. The Court erred in upholding the validity of the ordinance of the Police Jury of Bossier Parish, Louisiana, creating Consolidated Road District No. 1 in said Parish, said ordinance being in contravention of a prohibitory law, to-wit: Act 118 of 1921 of the Legislature of Louisiana, which said act prohibits the creation of a road district comprising the whole territory of a Parish.

16. The Court erred in holding that the ordinance creating Consolidated Road District No. 1 in said Parish in omitting an insignificant part of said Parish from said District was not a sham and pretense made for the purpose of evading the letter and violating the spirit of Act 118 of 1921 enacted by the Legislature of Louisiana.

17. The Court erred in holding that under the laws of Louisiana a tax might be levied in the year 1926 to pay the principal and interest of bonds falling due in the years 1926 and 1927.

[fols. 123-133] Wherefore appellant prays that the decree of this Court of —— —, ——, may be reversed and that an injunction or temporary restraining order be granted to appellant restraining the defendants, J. H. Nattin, Tax Collector, and the Consolidated Road District of Bossier Parish, Louisiana, through its President, J. G. McDade, from levying, assessing or attempting to collect the seven mills road tax levied by the Consolidated Road District of Bossier Parish, La., for the year 1926, based upon the

assessment against petitioner's property, and that of the Shreveport Bridge & Terminal Company in said District; for all orders and decrees necessary and for such general relief as the appellant may in good conscience be entitled to under the facts and the law of this case, and for all of which it shall ever pray.

Wilkinson, Lewis & Wilkinson, Solicitors for Appellant.

[File endorsement omitted.]

[fol. 134] IN UNITED STATES SUPREME COURT

ORDER ENLARGING THE TIME FOR FILING TRANSCRIPT—Filed April 29, 1927

On motion of the St. Louis and Southwestern Railway Company, and on suggesting to the Court that on account of the voluminous record, it has been impossible to complete the narrative of the testimony and the exhibits;

And on further suggesting that it is impossible to complete the record in time to docket the cause and file the transcript with the Clerk of the Supreme Court by May 1, 1927;

And on further suggesting that the case cannot be reached by the Supreme Court before the October 1927, Term, and the ends of justice will not suffer from a delay in filing the transcript;

And on further suggesting that in order to submit the narrative form of the evidence to the Court for its approval and complete the record, it will be necessary that a further enlargement of the time for filing the record until June 1, 1927, be granted;

[fol. 135] It is ordered that the time within which the transcript in this case shall be returnable to the Supreme Court is hereby enlarged from the present expiration date of May 1, 1927, until June 1, 1927.

Rufus E. Foster, Circuit Judge. Louis H. Burns, District Judge. Ben C. Dawkins, District Judge.

Dated April 22, 1927.

Filed April 26, 1927. W. B. Lee, Clerk U. S. Dist. Court, West. Dist. of Louisiana.

[fol. 135a] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, CLERK'S OFFICE

CERTIFICATE OF CLERK OF COURT

I, W. B. Lee, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing two pages contain a full, true, and correct copy of order enlarging time for filing transcript in a cause entitled St. Louis Southwestern Ry. Co. versus J. H. Nattin, Tax Collector, Consolidated Road District of the Parish of Bossier, Louisiana, No. 278 on the Equity docket of said court, as the original of same appears on file in this office.

Witness my hand and seal of office at the City of Shreveport, Louisiana, on this the 27th day of April, A. D. 1927.

W. B. Lee, Clerk U. S. District Court, Western District of Louisiana. [Seal.]

[Endorsed:] No. 278. In Equity. United States District Court, Western District of Louisiana. St. Louis & Southwestern Ry. Co. vs. J. H. Nattin, Tax Collector, Consolidated Road District of Parish of Bossier, La. Order enlarging time for filing transcript. Copy: Certificate under seal Filed April 26, 1927. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana.

[fol. 135b] [Filed endorsement omitted.]

[fol. 136] IN UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed May 23, 1927

To the Honorable Clerk of the Supreme Court of the United States, Greetings:

On behalf of the appellant, we desire to submit the following statement of points to be relied upon, and parts of the record deemed necessary for the consideration of the Court in accordance with Paragraph 9 of Rule 11 of the Revised Rules of the Supreme Court of the United States.

Points to be Relied Upon by Appellant

1

That the creation of a consolidated road district of Bossier Parish, Louisiana, was illegal, being in violation of Act 118 of 1921, passed by the Legislature of Louisiana, prohibiting the creation of a road district comprising the whole trovention of a prohibited law is void.
Civil Code which provides that whatever is done in controvention of a prohibited law is void.

2

That Act 118 of 1921, passed by the Legislature of Louisiana, does not provide for any notice or hearing to any tax payer relative to the creation of a consolidated road dis- [fol. 137] trict, and the inclusion of the tax payers' property therein; That said act not only denies to complainant the right to a hearing relative to the creation of a consolidated road district and the issuance of bonds, but in Section 18 thereof, denies complainant any right to question the creation of the district, or the validity of the bonds; that, accordingly, said Act of the Legislature of Louisiana, provides for a taking of complainant's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

3

That in this case, the defendants, by seeking to tax the property of complainant for the building of competing highways which will have the effect of decreasing complainant's freight and passenger earnings, amounts to confiscation of complainant's property and a taking thereof without compensation, and without due process of law, in controvention of Article 14 of the Constitution of the United States.

—

That the seven mills tax levied by the consolidated road district of Bossier Parish, Louisiana, is illegal because it was levied on property assessed for taxes in the year 1926

to pay interest on bonds for the years 1926 and 1927, in contravention of Article 14, Section 14, of Paragraph A of the Constitution of Louisiana, adopted in the year 1921, providing that the governing authorities shall impose and collect, annually, a tax sufficient to pay the interest and bonds falling due each year.

5

That the property of the complainant railroad was arbitrarily assessed at a higher proportion of its value than other property in the consolidated road district of Bossier Parish, Louisiana, and that such discrimination in assess-[fol. 138] ment denies to complainant equal protection under the law, which amounts to a taking of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

6

That the assessment and tax complained of unlawfully burdens the interstate commerce of complainant railroad by imposing upon the revenue accruing therefrom an unlawful, unjust, discriminatory tax, in violation of Article 1 Section 8 of the Constitution of the United States providing for the regulation of commerce between the states.

7

Appellant further intends to rely upon each and every point raised in the assignment of errors herein filed and incorporates said assignment of errors herein and as a part hereof, the same as if it were recited at length herein.

In view of the premises, you are hereby instructed to incorporate in the printed record the following portions of the transcript:

1. Complaint in equity.
2. Amended complaint.
3. Motion to dismiss.
4 Answer of defendants.
5. Narrative statement of the evidence taken on trial of the application for preliminary injunction.
6. Assignment of errors.

7. This statement of points intended to be relied upon by appellant, and designation of the parts of the record to be printed.

8. Written opinion of Judge Dawkins.

Respectfully submitted.

Wilkinson Lewis & Wilkinson. J. D. Wilkinson, Huffman Lewis, W. S. Wilkinson, J. R. Turney, Attorneys for complainant.

[fol. 139] I hereby certify that a copy of the above and foregoing statement of points to be relied upon by the complainant, and designation of the parts of the record to be printed in this cause, has been served upon opposing counsel, in accordance with the rules of court.

W. S. Wilkinson, of Counsel.

[fol. 139a] [File endorsement omitted.]

[fol. 140] In the Supreme Court of the United States

Designation of Additional Parts of Record to be Printed—Filed June 7, 1927

To the Honorable Clerk of the Supreme Court of the United States, Greetings:

On behalf of the appellant we desire to supplement our previous designation of matters to be printed in the record of the above numbered and entitled cause, so as to add thereto the following:

1. Judgment and decree.

2. Motion for appeal filed by complainant.

Respectfully submitted.

J. R. Turney, Wilkinson Lewis & Wilkinson, by W. S. Wilkinson, Attorneys for Appellant.

I hereby certify that a copy of the above and foregoing designation of additional parts of the record to be printed in this cause has been served upon opposing counsel in accordance with the rules of court.

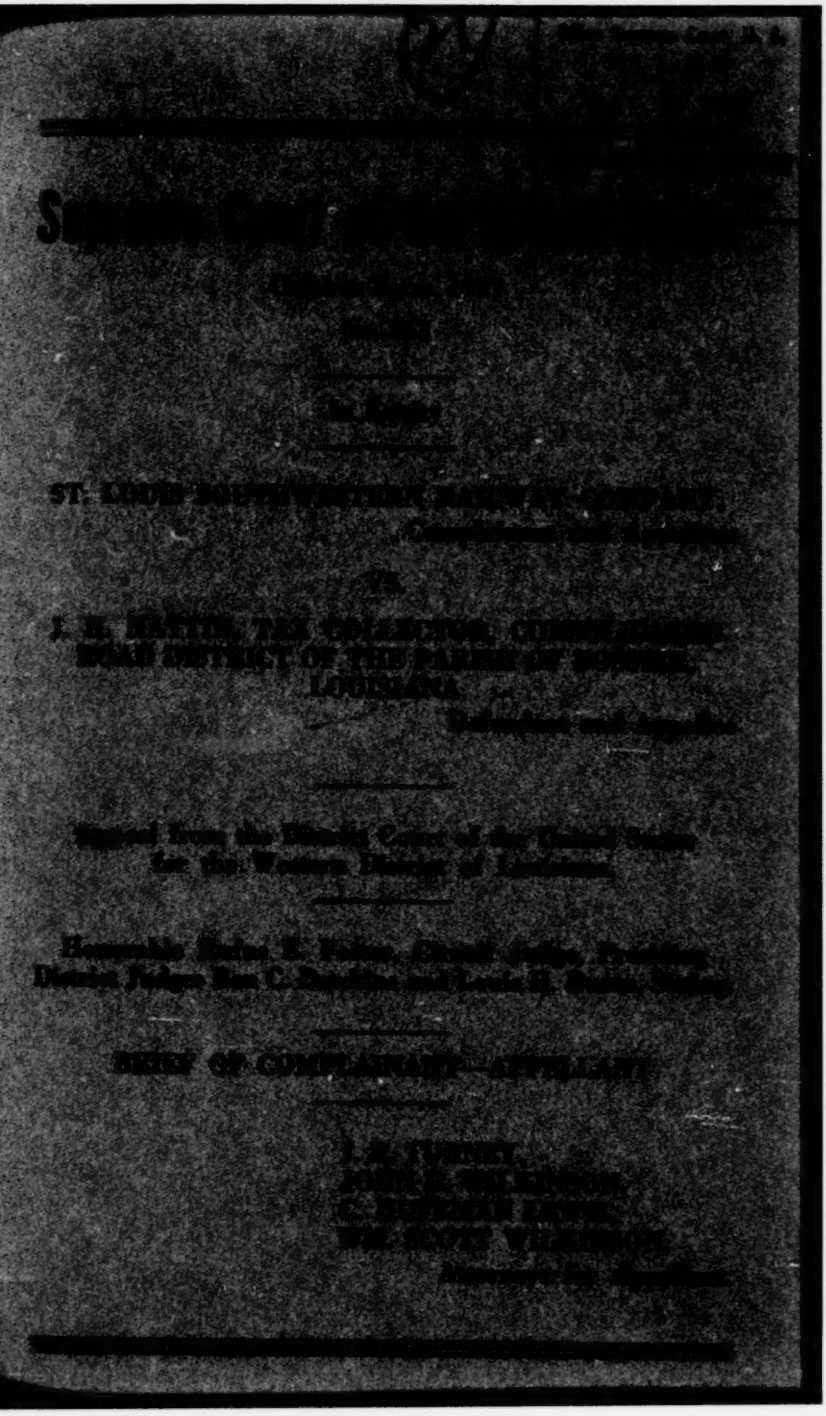
This 6th day of June, 1927.

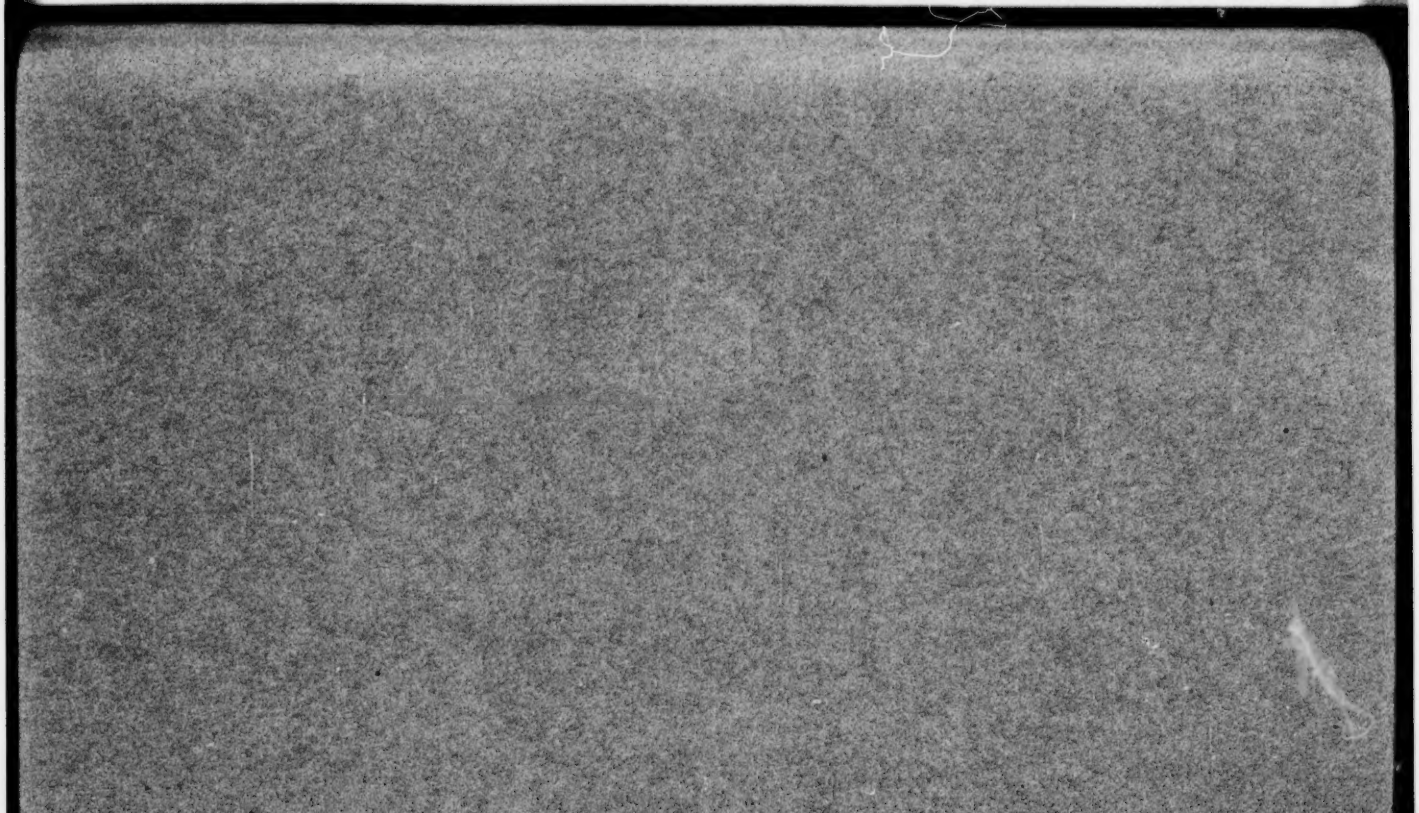
J. R. Turney, Wilkinson Lewis & Wilkinson, by W. S. Wilkinson, Attorneys for Appellant.

[fol. 141] [Endorsed:] In the Supreme Court of the United States. No. 1144. October Term, 1926. St. Louis Southwestern Railway Co., complainant and appellant, vs. J. H. Nattin et al., defendant and appellee. Designation of additional parts of the record to be printed. J. R. Turney, Wilkinson Lewis & Wilkinson, attorneys for complainant.

[fol. 142] [File endorsement omitted.]

Endorsed on cover: File No. 32,711. D. C. U. S., W. Louisiana. Term No. 263. St. Louis & Southwestern Railway Company, appellant, vs. J. H. Nattin, tax collector Consolidated Road District of the Parish of Bossier, Louisiana. Filed May 23rd, 1927. File No. 32,711.





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Supreme Court of the United States

October Term, 1927

No. 263

In Equity

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,

Complainant and Appellant

VS.

J. H. NATTIN, TAX COLLECTOR, CONSOLIDATED ROAD DISTRICT OF THE PARISH OF BOSSIER, LOUISIANA

Defendant and Appellee

Appeal from the District Court of the United States for the Western District of Louisiana.

Honorable Rufus E. Foster, Circuit Judge, Presiding
District Judges Ben C. Dawkins and Louis H. Burns, Sitting.

BRIEF OF COMPLAINANT—APPELLANT

OPINION OF THE LOWER COURT

At the time of the preparation of this brief the opinion of the United States District Court for the Western District of Louisiana, from which this appeal was taken, has not been officially reported. The opinion of the Hon. Judge Dawkins was rendered on March 15, 1927, and will be found on pages 76 to 89 of the record.

JURISDICTION

The complainant brings this proceeding under Sec. 266 of the Judicial Code as amended by the Act of Feb. 13, 1925, 43 Stat. 938, and seeks to obtain an injunction restraining the enforcement of an ordinance passed by the Police Jury of Bossier Parish, Louisiana, creating a Consolidated Road District in said Parish, issuing bonds therein and levying special taxes against the property of the complainant within said district. The appeal to this court is provided for in the above mentioned Section of the Judicial Code as follows:

> "The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

Complainant alleges that Act 118 of 1921 of the Legislature of Louisiana authorizing the creation of Consolidated Road Districts is unconstitutional and null and void because it affords taxpayers like complainant no opportunity whatever to be heard at any time on any question concerning the creation of such road district, the issuance of bonds or the levying of special taxes therein (R-7); that the effect of including complainant's property within the defendant road district is to levy a tax burden upon the revenues derived by it in interstate commerce for the building up of a competing system of hard surfaced highways which will decrease the earnings of complainant without any resulting benefit whatsoever; (R-12) that complainant's property will therefore be taken without due process of law and in violation of the Fourteenth Amendment of the Consititution of the United States and in violation of Article 1, Sec. 8 of the Constitution of the United States by imposing an

unlawful burden upon interstate commerce, and furthermore through an arbitrary and discriminatory assessment complainant will be denied the equal protection of the laws. There are other claims concerning the illegality of the creation of the defendant road district, the issuance of bonds therein and the levying of taxes against complainant's property which need not be mentioned here as grounds for the exercise of the jurisdiction of this court.

The lower court ruled that a road tax partook of the nature of a general tax rather than a special tax, and that benefits would be conclusively presumed so that no notice or hearing of the creation of the taxing district or the levying of the taxes would be necessary in order to guarantee due process of law to a complaining tax payer. (R-83 to 86). It further held that the right to complain of the discriminatory assessment is barred by the Louisiana statute of limitations requiring contests relating to assessments of property to be brought within thirty days after the filing of the assessment rolls, the State statute being Act 97 of 1924. (R-88). The District Judges furthermore sustained pleas of prescription filed by defendant based upon paragraph (N) of Sec. 14 of Act 14 of the State of Louisiana, which provides that suits to contest the regularity or legality of any bond election held in the State of Louisiana should be brought within sixty days. (R-81).

STATEMENT OF THE CASE

The St. Louis Southwestern Railway Company, complainant is a railway corporation organized under the laws of the State of Missouri and operating a line of interstate railway through Bossier Parish in the State of Louisiana. It alleges that the Police Jury, the governing authority of Bossier Parish, Louisiana, has attempted to organize a consolidated road district in said Parish under the provisions of Act 118 of the Legislature of the State of Louisiana for the year 1921, which

said district includes practically all of the territory within the Parish of Bossier as will be shown by plat attached to its bill of complaint. (R-2, 12).

The petitioner shows that the consolidated road district through its commissioners proposes to construct a system of hard surfaced highways within the said road district, and in order to raise the necessary money for the contemplated improvement has issued bonds in the sum of $1,389,500.00, and in order to pay said bonds and interest when they mature has levied a tax or special assessment against the Railway Company's property in the amount of seven mills for the year 1926. It avers that the tax collector for said district is demanding the payment of taxes in the amount of $7,003.08 on account of this special assessment in the said road district. The appellant further shows that it is the owner of all of the capital stock of the Shreveport Bridge & Terminal Company which owns property in said district and that it is bound and obligated to pay all taxes assessed against the Bridge & Terminal Company. (R-3, 4). The taxes assessed against the Shreveport Bridge & Terminal Company amount to the sum of $1,092.49, and complainant on behalf of the Shreveport Bridge & Terminal Company seeks also to restrain the collection of this tax.

The petitioner charges that the assessment of its property and that of the Shreveport Bridge & Terminal Company in the consolidated road district for any taxes whatsoever is illegal and in violation not only of the Constitution of the State of Louisiana but in violation of Section 8, Article 1 and of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States for the following reasons, to-wit:

FIRST: That the creation of the said consolidated road district is made in violation of the laws of the State of Louisiana in that it embraces the entire Parish of Bossier with but slight exceptions, which exceptions complainant charges are but a

pretense and a sham made for the purpose of evading the State laws which prohibit the creation of a road district comprising the whole territory of a Parish. (R-4, 5).

SECOND: That the said seven mill tax levied by the said district for the year 1926, was in fact made for the purpose of paying bonds and interest on bonds falling due both in the year 1926 and in the year 1927, contrary to the statutory provisions of Louisiana requiring the levy of taxes to pay only the bonds and interest which mature in the year for which the taxes are levied. (R-5).

THIRD: That under Act 118 of 1921 enacted by the Legislature of Louisiana no notice is provided and no hearing is authorized to any tax payer as to the creation of a consolidated road district or the issuance of bonds or levying of taxes therein. (R-7).

FOURTH: Complainant alleges that the defendant district proposes to tax its property for the purpose of building up a competing system of hard surfaced highways, some of which will provide parallel routes for motor and vehicular traffic which will carry freight and passengers in competition with complainant and the said Bridge Company, and that such taxation amounts to a confiscation of petitioner's property and a taking of the same without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. (R-5, 6).

FIFTH: Petitioner also complains that its property in the said road district is assessed at a larger percentage of its actual value than that of other tax payers in the said district, and that such assessment is arbitrary and discriminatory as compared with farm lands and other property in said district which is assessed at a much lower rate than complainant's property, thereby imposing upon complainant and the Bridge Company

a grossly unequal and disproportionate share of the cost of the contemplated improvements, denying to plaintiff the equal protection of the laws and violating Sec. 1 of the Fourteenth Amendment of the Constitution of the United States. (R-6).

SIXTHS That the confiscation of complainant's earnings and revenues by the imposition of taxes in the defendant district together with the discriminatory and unlawful assessment of its property results in the placing of an illegal burden upon the interstate commerce of petitioner in violation of Art. 1 of Sec. 8 of the Constitution of the United States. (R-12,13).

The complainant avers that notwithstanding the illegalities and irregularities complained of hereinabove, the defendant J. H. Nattin, Tax Collector for the Consolidated Road District of Bossier Parish, Louisiana will proceed to advertise complainant's property and that of the Shreveport Bridge & Terminal Company for sale to enforce the payment of said illegal taxes so levied by the defendant district resulting in irreparable injury to complainant unless restrained by a writ of injunction. (R-8). Complainant accordingly prays that such injunction issue restraining the defendants from levying said road taxes for the year 1926 against complainant's property. (R-10).

Defendants filed a motion to dismiss the complaint for the reason that St. Louis Southwestern Railway Co. did not show sufficient interest to prosecute this suit on behalf of the Shreveport Bridge & Terminal Company, and furthermore that there was a non-joinder of parties plaintiff because the Shreveport Bridge & Terminal Company was necessary party to the suit. The motion to dismiss, furthermore, set forth that allegations in the bill of complaint were too vague and general and were not sufficient to support any claim for relief sought, and that the bill of complaint set forth no ground or right in equity

for the issuance of a preliminary injunction. (R-15, 16). The motion to dismiss was by consent deferred for consideration with the merits of the case.

Subject to the motion to dismiss, respondent answered, alleging that the complainant has no right of action under the laws of the state, (a) for the reason that if such right had ever existed, which was denied, same had prescribed and perempted; (R-17) that the said tax was levied and imposed for the sole and only purpose of paying the principal and interest of a bond issue of $1,600,000.00 by the Police Jury of said parish as the governing authority of said road district, pursuant to the Constitution and laws of the State of Louisiana, after due notice and publication thereof for a period of thirty days, and approval by a majority vote of the qualified tax payers of said district, the result of which was duly promulgated; that more than sixty days elapsed from the promulgation of the result of said election without any attack being made thereon and the said bonds had been on March 9, 1926, acquired by the Commercial Securities Company, Caldwell & Company and the Whitney Central Trust & Savings Bank; that the said bonds contained the recital that all the provisions of law had been complied with as required by Acts 33 and 46 o fthe year 1921, and on August 10, 1926, the Police Jury, as the governing authority for said district, had levied said tax of seven mills upon all the property in said district, a copy of the ordinance levying the same having been published in the official journal of said parish on August 19th, to September 23rd, 1926, inclusive, all of which was done prior to the institution of this suit by complainant; (R-18, 19). (b) That in paragraph "N" of Sec. 14, Art. 14 of the said Constitution of 1921, and Secs. 33, 34, 35, 42 and 43 of Act 46 and Sec. 11 of Act 118 of the Legislature of Louisiana for the year 1921, the right of persons to resort to the courts "for the purpose of questioning the validity of the election, the bonds or the taxes levied, imposed and assessed for the purpose of paying said bonds

in principal and interest, was limited to sixty days from the date of the promulgation of the result of the election," which respondent pleaded in bar of complainant's right to institute this suit; (R-19). (c) That sec. 43 of Act 46 of 1921 provides:

"If any resolution be adopted or proceeding had, more than thirty (30) days after the promulgation of the result of the election, no contest, action or proceeding to question the validity or legality of such resolution or proceeding so adopted, shall be begun in any court by any person for any cause whatsoever, after the expiration of thirty (30) days from the date when the resolution was adopted, or proceeding had." (R-20).

That more than thirty days had expired from the promulgation of the result of said election before this suit was brought, and respondent also pleaded the same in bar of this action; (d) That the assessment upon the tax rolls and the valuation of complainant's property was fixed by the Louisiana Tax Commission, after due notice and hearing, as well as that of other tax payers; that said assessment rolls were filed with the Clerk of the Court of Bossier Parish, on October 6, 1926, and that under Act No. 97 of the Legislature of 1924 the complainant and all other persons making return of property for taxation had thirty days therafter within which to contest the correctness or legality of said assessment, but that complainant did not avail itself of said right and the same had prescribed, which prescription of thirty days respondent also specially pleaded. (R-20).

Respondent then answered the bill sereatim, admitting the jurisdictional averments, but otherwise denying the illegality or irregularity of the proceedings by which the property was assessed and the tax levied or that the said road district had been created in bad faith. (R-21 to 33).

The case was taken up and tried with the result that the lower court sustained the defenses set up by defendants in their answer excepting the pleas of non-joinder and of estoppel and rejected the demands of the complainant, from which judgment complainant has appealed to this court, assigning as error (R-92, 93, 94) the following propositions:

ASSIGNMENT OF ERRORS

1. The Court erred in finding that Act 118 of the General Assembly of Louisiana for the year 1921, authorizing the creation of defendant district and the levy of the tax herein in controversy, did not deprive complainants of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

2. The Court erred in finding that the Ordinance of the Police Jury of Bossier Parish, creating the Consolidated Road District of the Parish of Bossier, did not deprive complainant of its property without due process of law in contravention of said Amendment.

3. The Court erred in finding that the Ordinance of the Police Jury of Bossier Parish, levying the tax against complainant's property herein complained of, did not unlawfully deprive complainant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

4. The court erred in finding that the tax against complainant's lands was a general tax and not a special assessment.

5. The Court erred in finding that the failure of said Act 118 to give complainant notice and an opportunity to be heard upon the question of whether its lands would be benefited by the proposed improvement, before said District embracing its

property was created by the said Police Jury, did not unlawfully deprive it of its property without due process of law and in contravention of said Amendment.

6. The Court erred in finding that the failure of said Act 118 to give complainant notice and an opportunity to be heard upon the amount of benefits to be assessed against its property on account of said improvement before said tax was levied, did not deprive complainant of its property without due process of law in contravention of said Amendment.

7. The Court erred in finding that Act 118, of 1921, in providing that the question of the creation of said District and the issuance of the obligations for which said tax is levied should be determined by the owners of property within said District at an election in which Complainant was expressly excluded, did not deny complainant of the equal protection of the laws in contravention of said Amendment.

8. The Court erred in finding that the imposition under the authority of the State of Louisiana of the ad valorem tax against the full value of the property of the Complainant and against but approximately one-half the value of other property in the District did not unlawfully deprive Complainant of the equal protection of the laws contrary to said Amendment.

9. The Court erred in finding that the collection of said tax under the authority of said State would not unlawfully deprive Complainant of its property without due process of law contrary to said Amendment.

10. The Court erred in failing to find that the improvements on account of which said tax is levied would not benefit complainant or its property, and in failing to find that the assessment of special taxes against Complainant's property to pay for the construction of a competing system of hard sur-

faced highways to the injury and damage to Complainant's interstate railroad business imposes an undue burden on interstate commerce in violation of Section 8 of Article 1 of the Constitution of the United States, and is a taking of Complainant's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

11. The Court erred in failing to find that said tax is grossly and palpably in excess of the benefits which Complainant's property will receive on account of the proposed improvement.

12. The Court erred in failing to find that said tax arbitrarily imposes a grossly and palpably unfair, unjust, disproportionate and discriminatory burden upon Complainant as compared with other property owners in the District.

13. The Court erred in declining to follow the authority of the decision of the Supreme Court in the case of Browning vs. Hooper, 269 U. S., 396; 70 L. Ed. 330.

14. The Court erred in holding that the prescription periods of thirty and sixty days provided by Act 46 of 1921, Act 97 of 1924, Act 118 of 1921, of the Legislature of Louisiana, and Section 14 of Article 14 of the Constitution of Louisiana are applicable to the issues in this case.

15. The Court erred in upholding the validity of the ordinance of the Police Jury of Bossier Parish, Louisiana, creating Consolidated Road District No. 1 in said Parish, said ordinance being in contravention of a prohibitory law, to-wit: Act 118 of 1921 of the Legislature of Louisiana, which said act prohibits the creation of a road district comprising the whole territory of a Parish.

16. The Court erred in holding that the ordinance creating Consolidated Road District No. 1 in said Parish in omitting

an insignificant part of said Parish from said District was not a sham and pretense made for the purpose of evading the letter and violating the spirit of Act 118 of 1921 enacted by the Legislature of Louisiana.

17. The Court erred in holding that under the laws of Louisiana a tax might be levied in the year 1926 to pay the principal and interest of bonds falling due in the years 1926 and 1927.

ARGUMENT

The seventeen assignments of error which are urged by the appellant are intended to present to this Court the six reasons urged for the illegality in the creation of the defendant road district, the issuance of bonds, and the levying of taxes on appellant's property therein. Therefore, instead of taking up each assignment of Error sereatim, we will take up in regular order the six points relied upon in appellant's attack against the defendants.

I

District Embracing Entire Parish Contrary to Law

Appellant's first contention is that the creation of the Consolidated Road District of Bossier Parish, Louisiana, is made in violation of the laws of the State of Louisiana in that it embraces the entire Parish of Bossier contrary to the provisions of the Constitution of the State of Louisiana, and particularly of Act 118, 1921, Section 10, which reads as follows:

> "That it shall be competent for the police jury of any parish in which now or hereafter there shall have been created one or more road districts, or sub-road districts, to consolidate all of said road districts and sub-road districts, or any number of them, into one road district, and may, at the same time, add thereto and include in said new district any part or parts of the parish not previously divided, erected, or included in a district or districts, in

the manner hereinafter provided. Any such road districts, hereafter created shall be known as Consolidated Road District and its bonds shall be known as Consolidated Road District Bonds. No Consolidated Road District shall, however, comprise the entire territory of a parish. In case there should be more than one Consolidated Road District in a parish, they shall be distinguished by adding to their names the letters, A., B., C., etc."

The lower Court overruled complainant's contention that the creation of defendant District was illegal (R-81) to which ruling of the Court Complainant has filed Assignment of Errors numbered 15 and 16 (R.-94.)

A reference to the map attached to the bill of complaint (R. 12) shows that the road district was created out of practically the entire Parish of Bossier. Two little strips of land were not included on the East and one on the North, but they are so small and insignificant as to show that the District was created out of the entire Parish and that the omission of these small strips was for the purpose of evading the law.

The district includes practically the entire Parish and this evasion of the law does not alter the legal effect of what was done.

Section 10 of Act 118 of 1921 contains an emphatic prohibition against the creation of a road district comprising the whole territory of a Parish and there can be but little dispute that the road district under investigation does comprise the whole territory of Bossier Parish.

Its creation was a nullity.

Louisiana Civil Code Article 12 provides "whatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed."

So zealous has been the courts that originally they held that what was done in violation of the Constitution could not be cured by prescription or by any lapse of time. Joyce vs. Police Jury 146 La. 322, 83 Sou. 587.

And they held likewise that one could not be estopped by any acts or contracts so as to force him to violate a prohibitory law. Kelly vs. Kelly 131 La. 1025, 60 Sou. 671.

In this connection we may consider the effect of the constitutional amendment of 1924 on Act 118 of 1921 of the Louisiana Legislature, since this amendment omits the Constitutional prohibition against the inclusion of an entire Parish in a Road District.

Act 118 of 1921 contains an absolute prohibition against the inclusion of all of the territory of a Parish in a road or consolidated road district. At the time when this Act was passed, the Constitution of the State of Louisiana had a similar provision but in 1924 an amendment to the Constitution omitted the prohibition. Defendants contend that this had the effect of eliminating the prohibition from the Act of 1921, but defendants submit neither reasons nor authorities for such contention.

The power of the Legislature of a State in all matters is unlimited except where prohibitions against the exercise of that power in any particular regard are contained in the Constitution of a State or of the United States. The Legislature in 1921 had authority to prohibit the creation of a consolidated road district out of an entire Parish, irrespective of the clause in the Constitution to that effect and the act of 1921 would have been perfectly constitutional if the constitution of 1921 had read exactly like the amendment of 1924, when the Act of the Legislature was passed. The effect of the Constitutional

Amendment of 1924, is, therefore, simply to remove a constitutional prohibition and leave the Legislature unlimited authority in this respect. The amendment of 1924 is in no wise in conflict with the Act of 1921. It, therefore, does not impliedly repeal the provision in the Act of 1921 that a consolidated road district shall not comprise the whole territory of a Parish. Certainly, it does not expressly repeal that provision.

The general rule on the subject is thus stated in 6 R. C. L. page 34:

> "When a new constitution is established it is customary to insert a provision that all statutes in force and not inconsistent with the new constitution shall continue until amended or repealed by the legislature, though it is generally recognized that such laws remain in force without an express provision to that effect. Although a new constitution may contain prohibitions as to special legislation it will not be construed as effecting a repeal of, or making inoperative, special laws passed before its adoption. Where a constitutional provision, instead of being restrictive, permits greater freedom of action the same principles seem to apply."

The same principle of law is enunciated in 12 C. J. 739:

> "A constitutional provision that is not self-executing does not effect existing statutes until the enactment of legislation putting it into effect."

The Amendment of 1924 is not self operative and it is in no wise repugnant to the Act of 1921. It neither expressly nor impliedly repeals the Act of 1921. The law of Louisiana in force on the subject at this time, therefore, prohibits absolutely the creation of a road district or consolidated road district out of the entire territory of a Parish.

Since the Louisiana Civil Code, Article 12 provides:

> "Whatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed,"

it is evident that the Act creating the Consolidated Road District of Bossier Parish out of the entire Parish was an absolute nullity, which will not be cured by any statute of prescription. Justice Monroe of the Supreme Court of Louisiana jocosely remarked that if the village barber called an election for the voting of a bond issue and creation of a district, no statute of prescription would cure the illegality of such an election, since it was void ab initio, having been called without legal authority. We may likewise say that where the Act is done in defiance of legal authority and contrary to legal prohibitions, the law of the State declaring such action to be absolutely null and void renders the act done ineffective, just as if it had never been done at all and prescriptive statutes would, therefore, not apply.

At any rate this court must follow the final decision of the Supreme Court of Louisiana on the subject, as was ennunciated in the case of Shautim vs. Board of Commissioners, 160 La. 1036, 107 Sou. 987, holding:

> "Our conclusion is that inasmuch as the plaintiffs have limited their cause of action to an attack on the original ordinance creating the district and have not made any attack on any tax, bond issue or election held thereunder, the plea of prescription of 60 days is not applicable."

Counsel for defendants is in error in stating that we limit our attack to the constitutional provision of the Constitution of 1921, for the complainant in this case specifically alleges: (R-9).

> "Your complainant further shows that for the reasons and things hereinbefore set forth the said Consolidated Road District of Bossier Parish never attained any corporate existence or acquired any rights to levy taxes or perform any act whatever, because created so as to include the entire Parish, in violation of the constitution and laws of Louisiana and its attempted creation was utterly null and without any legal effect."

The defendants' claim that the right to attack the creation of the District is barred by sixty (60) days prescription is based on Article 14, Section 14, paragraph (n) of the Constitution of Louisiana of 1921, which reads as follows:

> "For a period of sixty (60) days from the date of promulgation of the result of any election held under the provisions of this section, any person in interest shall have the right to contest the legality of such election, the bond issue provided for, or the tax authorized, for any cause; after which time no one shall have any cause or right of action to contest the regularity, formality, or legality of said election, tax provision, or bond authorization, for any cause whatsoever. If the validity of any election, special tax or bond issue authorized or provided for, held under the provisions of this section, is not raised within the sixty (60) days herein prescribed, the authority to issue the bonds, the legality thereof and of the taxes necessary to pay the same shall be conclusively presumed, and no court shall have authority to inquire into such matters."

The complainant here is not contesting the regularity, formality or legality of any election, nor is it attacking the general authority of this Road District to issue the bonds, or the legality of the bonds, and the sixty (60) day prescription does not apply to its attack on the creation of the district disassociated from any attack on the election or the bonds.

This was expressly decided in the case of Shatim vs. Board of Commissioners 160 La. 1036, 107 Sou. 897, where the court at page 1044 said:

> "Our conclusion is that, inasmuch as the plaintiffs have limited their cause of action to an attack on the original ordinance creating the district, and have not made any attack on any tax, bond issue or election held thereunder, the plea of prescription of 60 days is not applicable.
>
> "Nor is the constitutional limitation of 60 days pertinent, for the reason that such limitation in express words

only applies to elections held and taxes levied and bonds issued under and by virtue of the Constitution of 1921 and the laws passed in pursuance thereof."

Be that as it may, in this proceeding the complainant asserting that its property is about to be taken without the forms of law and that it has been denied due process of law, the statutes of limitations of the State should not apply.

II

Taxes Illegally Levied in 1926 to Pay Bonds and Interest for Two Years

The Complainant's second contention is that the defendant district cannot legally levy taxes in 1926 to pay interest and bonds for the year 1926 and the year 1927 also. In the seventeenth assignment of error the appellant charges that the lower court erred in holding that under the laws of Louisiana a tax might be levied in the year 1926 to pay the principal and interest of bonds falling due in the years 1926 and 1927. (R-94)

Affidavits filed in evidence (R-36, 37) show that the assessed value of all property in the District amounts to:

	$17,975,300.00
7 mills will produce.....	125,825.27
The total bond issue to be sold.....	1,389,500.00
4½ per cent interest on same from March 1, 1926 to March 1, 1927.....	62,527.50
Interest from March 1, 1927 to Sept 1, 1927..	31,263.75
Total Interest.....	$93,791.25

A sinking fund is provided to pay certain bonds as follows:

Date due	Series	Amount
9-1-26	1	$2,000.00
9-1-26	2	1,500.00
9-1-26	3	1,500.00
	Total for year 1926.....	$5,000.00
3-1-27		11,500.00
9-1-27	1	3,000.00
9-1-27	2	1,500.00
9-1-27	3	1,500.00
	Total for year 1927.....	$17,500.00
	Grand Total.....	22,500.00
	Add Interest.....	93,791.25
		$116,291.25

From this it will be seen that of the 7 mill tax levied in 1926, a large part is to pay bonds maturing in 1927 and interest on the entire bonded debt from March 1st, 1926, to September 1st, 1927, leaving still a surplus of $9,534.00 or the difference between $125,825.25 (taxes that will be collected) minus $116,291.25 (interest on all bonds and payment of all bonds maturing to September 1, 1927) which amount is more than sufficient to cover all expenses of maintaining the district.

The defendant makes a different calculation—(R-73). But defendant's own evidence (R-73) admits that the bonds are to be sold to pay bonds and interest for both years mentioned.

Article 14, Sec. 14 of paragraph (a) of the Constitution of 1921 reads as follows:

"Municipal corporations, parishes and school, road, sub-road, sewerage, drainage and sub-drainage districts hereinafter referred to as subdivisions of the State, may incur debt and issue negotiable bonds, when authorized by vote of a majority, in number and amount, of the property taxpayers qualified to vote under the Constitution and laws of this State, who vote at an election held for that purpose after notice published or posted for thirty (30) days in such manner as the Legislature may prescribe, and the governing authorities of such subdivisions shall impose and collect annually, in excess of all other taxes, a tax sufficient to pay the interest annually or semi-annually and the principal falling due each year, or such amount as may be required for any sinking fund necessary to return said bonds at maturity."

Even if the tax is otherwise legal, the district has no right to levy and collect taxes for the year 1926 to pay the interest on the bonds for the year 1927, or to pay or provide for the payment of bonds maturing that year, but must levy a tax in 1927 to pay the bonds and the interest and those maturing that year. The grant of power to levy and collect such "a tax sufficient to pay the interest annually or semi-annually and the principal falling due each year" means that such tax must be levied and collected in the year in which the interest accrues, and this grant of power is also a denial of the right to collect taxes one year to pay the interest of another year.

Cooley on Constitutional Limitations, p. 99, says:

"Another rule of construction is, that when the constitution defines the circumstances under which a right may be exercised or a penalty imposed, the specification is an implied prohibition against legislative interference to add to the condition, or to extend the penalty to other cases."

The necessity for a strict application of tax funds to bonds falling due in the year for which the taxes are levied was em-

phasized in the case of Guardian Savings and Trust Co. vs. Dillard 15 Fed. (2d) 996, the syllabus of which reads as follows:

> "Where assessment by commissioners of road improvement district for payment of coupons and principal of bonds exceeded amounts maturing in that year, held, that assessment should have been reduced by amounts contributed by state toward retirement of bonds, under Acts Ark. Sp. Sess. 1923 (known as Harrelson Act) p. 32, Sec. 23, statute being mandatory in that respect, and property owner was entitled to recover excess over reduced rate paid under protest."

We, therefore, submit that the court was in error in holding that a tax of 7 mills could be levied in the year 1926 when the greater part of the tax levy was for the purpose of paying bonds and interest falling due in the succeeding year.

III

Failure to Give Notice and Hearing Denial of Due Process of Law.

Appellant's third objection to the creation of the defendant district and to the tax levy and bond issue therein is that under Act 118 of 1921, enacted by the Legislature of Louisiana, no notice is provided and no hearing is authorized to any tax payer as to the creation of a Consolidated Road District, or the issuance of bonds, or the levying of taxes therein. This objection is presented to your honorable court in assignments of error, Nos. 1 to 7 inclusive and assignment of error No. 13 (R-92, 94).

A reading of the Louisiana statute referred to will show that no notice of any kind is provided and no hearing whatever is authorized for any tax payer when a Consolidated Road District is created, either as to the boundary of said district,

property to be benefited by its creation, or lands to be taxed for the payment of bonds which might be issued by the district.

This act was enacted to provide for the formation and consolidation of road and sub-road districts and prescribes the procedure therefor.

The first section provides that no road district or sub-road district shall be created, comprising the whole territory of a parish.

Section 2 provides that no road or sub-road district shall be created until the notice prescribed in the act shall have been given, but it provides that the Police Juries of the several parishes of the state may give such notice upon their own initiative and shall give it when requested to do so by the petition in writing of one-fourth of the property taxpayers within the district.

This notice to create a road or sub-road district is ordered by a resolution which shall state the territory the road district or sub-road district is to be composed of and the proposed boundaries thereof, which notice shall be published once a week for four successive weeks.

Section 3 provides that the police jury shall hear all objections at the time appointed, that its decision thereon shall be final and conclusive, and that it may change the boundaries of the proposed road or sub-road district and adopt a resolution finally fixing the boundaries of such district.

Notice of the formation of such district must then be given in a newspaper published in the parish, one publication of which is sufficient.

These Sections relate to the creation of a road or sub-road district and have no application to the consolidation of existing road districts, which is provided for in Section 11 of this Act, which reads as follows:

> "That the procedure to create a Consolidated Road District shall be as follows:
>
> "(a) The Police Jury shall pass an ordinance or resolution which shall specify (but need not describe) the existing road districts, or sub-road districts, to be included in the Consolidated Road District, and their respective indebtedness both bonded and floating, shall declare that it is advisable to consolidate the roads of the several districts (and when such is the fact, certain unorganized road territory of the parish), into a consolidated road system; and shall make an estimate of the amount of new money presently needed to enlarge and extend the district system or systems; but the amount of new money when added to the aggregate of the bonded and floating debt of the road districts included in the consolidated district shall not exceed ten per cent of the assessed valuation of the Consolidated Road District.
>
> "(b) Such ordinance shall be published once in the official journal of the parish."

The remaining paragraphs of this Section provide that not less than ten days after publication of the ordinance the police jury shall call an election for incurring debt and issuing bonds and that if a majority of the qualified taxpayers vote in favor of such bonds, it shall pass an ordinance declaring that the consolidated road district has been created and provide for the issuance of the bonds.

But in this election the complainant could not have participated and could not have voted for the reason that under the Constitution of the State, Article 14, Section 14, such bond issues are permissible "when authorized by vote of a

majority in number and amount of the property tax payers qualified to vote under the Constitution and Laws of this State, who vote at an election held for that purpose, etc."

Therefore, it is submitted that under Act 118 of 1921 no notice whatever and no opportunity to be heard was ever afforded the complainant as to the creation of the road district in question.

The act itself did not provide for any notice as to the creation of the district or as to the issuance of the bonds, excepting that they must be authorized by a vote of property tax payers who were authorized to vote under the Constitution and Laws of the State and inasmuch as under the Louisiana Constitution, Article 8, Section 1, corporations can not vote or participate in a general election, it will be seen that Act 118 of 1921 excluded the complainant from any participation in the election on the question whether the road district was to be created and as to whether the tax for the bonds in question should be levied or not.

Even the hearing providing for the creation of road and subroad districts did not pertain to the question of whether any tax was to be levied, but pertained wholly and solely to whether the district should be created or not.

Section 11 providing for the creation of consolidated road districts did not provide any hearing at all to the complainant, nor give it any opportunity or chance to be heard as to whether it should be included in the district, or if included in the district, whether its property located within the district should be liable for the taxes to be levied to pay the bonds in question. Indeed, the statute under consideration does not provide any opportunity at any place or at any time in which the complainant could have been heard as to the inclusion of its property in the consolidated road district, or as to the tax-

ing of its property for the payment for the construction of the roads, or as to the amount of taxes which should have been levied to pay for the construction of the roads. Indeed, it was denied any hearing whatever and any participation of any nature whatsoever in any of the proceedings leading up to the creation of the district, the issuance of bonds and the levying of the special tax in question.

Due process of law requires that a tax payer whose property is to be taxed for the payment of a local improvement, must at some time and at some place and in some manner be afforded an opportunity to protest against the procedure by which his property is taxed, and the failure to do so denies him due process of law.

Under Act 118 of 1921 the complainant had no opportunity to be heard as to whether the Consolidated Road District should be created or not. It did not provide for any hearing to it or other corporations or non-residents but limited the right to only the qualified electors of the district to say whether the district should be created and whether the tax should be levied.

This act plainly declares (Section 11) that the Police Jury shall pass an ordinance defining the boundaries and make an estimate of the new money necessary. Having done this, this Police Jury must, in ten days, call an election in the Consolidated Road Districts to be called, held and conducted like a regular bond election, at which is submitted the sole question of issuing the bonds. Paragraph (d) of this Section declares that "if a majority in number and amount of the qualified property taxpayers ** shall vote in favor of such bonds, the Police Jury shall promulgate and publish the result of such election and shall thereupon adopt and cause to be published in the official journal two ordinances. The first shall find and

declare that the consolidated road district has been created and the second shall provide for the issuance of Consolidated Road District bonds, etc."

Thus the complainant and all other non voters are debarred from any voice as to the creation of the district and debarred from any voice as to the issuing of the bonds; in fact, not only denied any hearing at all, but denied any voice as to taxing their property or any opportunity to show that they will receive any benefit whatever from the road taxes to be levied.

In the case of Ochoa vs. Hermandes 230 U. S. 139, the Supreme Court of the United States said:

> "Whatever else may be uncertain about the definition of the term due process of law, all authorities agree that it inhibits the taking of one man's property and giving it to another contrary to settled usages and modes of procedure and without notice or an opportunity for a hearing."

Here, the property of the complainant was included in the road district without any notice of hearing to it and without any opportunity whatever afforded to it under the terms of the Act 118 of 1921, by which it might have shown that its property should not have been included in the Consolidated Road District in question.

We repeat that we make no attack on the regularity of the proceedings of the Police Jury in creating this district or issuing the bonds insofar as being in compliance with Act 118 of 1921. These proceedings appear to be strictly in accordance with Act 118 of 1921. But we do attack the ordinance creating the district and we do attack Act 118 of 1921 providing for the creation of such districts without any notice or hearing so as to include the property of the complainants which is not benefited and will not be benefited by the construction of the

various hard surfaced roads in question, and this attack on the inclusion of the property of complainant in the district is not such an attack as is barred by the limitation period of sixty (60) days, prescribed by the Louisiana Constitution.

In the case of Shaw vs. Board of Commissioners 138 La. 917, 70 Sou. 910, the question before the court was the inclusion of the property of the plaintiff in a certain drainage district when it was claimed that the property of the plaintiff would not be benefitted at all. The court held that this limitation provision of the Constitution must be strictly construed, and "so construed, does not divest the courts of jurisdiction of a pending suit in which the litigant, making no attack on the validity of such bonds, seeks to prevent the Sheriff from selling his property for a tax thought by the Sheriff to have been levied for and pledged to the payment of the bonds, but the levying and pledging of which for that purpose the litigant denies."

Further, in passing on the contention of the plaintiff, the court said:

> "A drainage district has the special purpose of the improvement of particular property and when it is so formed to include property which is not and can not be benefitted directly or indirectly including it only that it may pay to the benefit to other property, there is an abuse of power and an act of confiscation."

The same doctrine is announced in the case of Miles Salt Company vs. Drainage District, 239 U. S. 478, 60 L. Ed. 392, where the property of the plaintiff was included in the drainage district though it received no benefit from the drainage at all. The Supreme Court of the United States declared that the inclusion of the property of the plaintiff within such district when it could not be benefited directly or indirectly

violated the due process clause of the United States Constitution and held that it was not liable for taxes levied within such district.

The right of a taxpayer to a notice in hearing is carefully considered in a very recent case decided by the Circuit Court of Appeals of the Eighth Circuit, entitled the Kansas City Southern Railway Company vs. Ogden Levee District, 15 F (2d) page 637, the opinion being handed down October 29th, 1926. In this case, the court said:

> "In all of these leading cases where judicial relief has been denied in tax assessment cases because of the party's failure to exhaust the remedies under State statutes such remedies have provided for a hearing and the introduction of evidence and some kind of public notice.
>
> "This Amendatory Statute does not provide for any hearing on the question of erroneous or unjust assessment. No opportunity is given to the taxpayer to file objections seeking to correct the assessment; no procedure is provided involving the introduction of evidence or notice of proceedings to those interested. There is no requirement that the Board of Directors shall make any new assessments founded on benefits, or take that into consideration in reducing or increasing assessments.
>
> "The courts have frequently had before them questions involving the sufficiency of proceedings leading up to the assessment of general and special taxes. Through them all it is apparent that the courts consider that where special assessments of benefits are made by boards or commissions under legislative authority as a basis for taxation to pay for special improvements, the taxpayer must have a right at some stage of the proceedings to a hearing, and that such hearing is not a mere matter of favor or grace with those entrusted with the assessments."

In the case just quoted from, it was contended by the defendant that plaintiff should have exhausted his remedies be-

fore the taxing boards of the State before seeking to enjoin the assessment and collection of the tax in a Federal Court, but on this point the court said:

> "It is also urged that appellants did not seek revision of the assessments made before the state and county assessing authorities. Section 9790 of the Arkansas statutes provides that the State Tax Commission shall have the power to raise or lower the values in any county, or the values of any individual taxpayer in any county so as to make the assessments uniform throughout the State.
>
> "This provision seems to relate to general taxation and not to special taxation based upon special benefits by reason of internal improvement. We do not think the same applicable to the situation here, and under the doctrine of the Supreme Court of the United States in Sioux City Bridge Co. vs. Dakota County, Nebraska, 260 U. S. 441, application to the State Tax Commission was neither practicable nor necessary."

The case of Londoner vs. Denver 210 U. S. 377, 52 L. Ed. 1112, involved a case where the taxpayer had a right to file objections and complaints to assessments against his property, but the court in this case held that such privilege did not afford the due process of law guaranteed by the Constitution of the United States. We quote from the opinion:

> "From beginning to end of the proceedings the landowners, although allowed to formulate and file complaints and objections, were not afforded an opportunity to be heard upon them. Upon these facts, was there a denial by the state of the due process of law guaranteed by the 14th Amendment to the Constitution of the United States? Where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that, at some stage of the proceedings, before the tax becomes irrevocably

fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing. But even here a hearing, in its very essence, demands that he who is entitled to it shall have the right to support his allegations by argument, however brief; and, if need be, by proof, however informal."

In the Londoner case just cited, the taxpayer had a right to file complaints and objections which the plaintiff in this injunction suit is not afforded, under the terms of Act 118 of 1921 of the Legislature of Louisiana. The plaintiff in injunction here is, under the laws of the State of Louisiana, not even entitled to vote at the election for the issuance of the bonds in question. Under the Act of 1921 and in Section 11 (d) thereof, it is provided that in order to create a Consolidated Road District a bond election must be held and if the bonds are voted, then the Police Jury is directed to pass an ordinance finding and declaring that the Consolidated Road District has been created. It will thus be seen that a corporation not entitled to vote has no voice either in the issuance of the bonds or the creation of the district.

Not only is the right to a vote or a hearing or an objection to the issuance of the bonds, the creation of the district and the levying of the taxes not afforded to the plaintiff corporation in this case, but in Section 18 of the Statute of Louisiana in question, *the plaintiff herein is denied any right to question the validity of the bonds before any administrative board, judicial body or court of the State for any reason whatsoever.*

Section 18 of the Louisiana Statute reads as follows:

"That the bonds of any road district or consolidation road district, authorized by a majority of number and amount of property taxpayers voting at said election, be, and the same are hereby approved, ratified and confirmed, and their validity shall not be questioned."

When it is remembered that the voting of the bonds is the act by which the district is created and that plaintiff corporation has no right to vote in the matter or be heard on the subject and since the validity of the bonds can not be questioned by any taxpayer in any court, then it naturally follows that the plaintiff here is denied the right to question the creation of the district, the issuance of the bonds and the levying of the necessary taxes for the payment thereof.

There is no case in any of the reports of any jurisdiction, which has held that in circumstances like these, due process of law has been afforded the taxpayer.

All courts follow the general principle which is thus stated in Turpin vs. Lemon, 187 U. S. 52; 47 L. Ed. 74:

> "Exactly what due process of law requires in the assessment and collection of general taxes has never yet been decided by this court, although we have had frequent occasion to hold that, in proceedings for the condemnation of land under the laws of eminent domain, or for the imposition of special taxes for local improvements, notice to the owner at some stage of the proceedings, as well as an opportunity to defend, is essential."

In Fallbrook Irrigation District vs. Bradley, 164 U. S. 112; 41 L. Ed. 387, a similar question was presented and the court among other things said:

> "It is also objected that under the act the land-owner has no right to demand and no opportunity is given him for a hearing on the question, whether his land is or can be benefited by irrigation as proposed; also, that he has no right to a hearing upon the question whether the statute has been complied with in the preliminaries requisite to the formation of the district.
>
> "The legislature not having itself described the district, has not decided that any particular land would or could possibly be benefited as described, and, therefore,

it would be necessary to give a hearing at some time to those interested upon the question of fact whether or not the land of any owner which was intended to be included would be benefited by the irrigation proposed."

Again in Turner vs. Wade, 254 U. S. 65; 65 L. Ed. 136, the question was decided thus:

"If the legislature of the state, instead of fixing the tax itself, commits to the subordinate body the duty of determining whether, and in what amount, and upon whom, the tax shall be levied, due process of law requires that at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer must have the opportunity to be heard, of which he must have notice, whether personal, by publication, or by some statute fixing the time and place of the hearing. See 210 W. S. 385, and previous cases in this court, cited on page 386. See also Coe vs. Armour Fertilizer Works, 237 U. S. 413, 425, 59 L. Ed. 1027, 1932, 35 Sup. Ct. Rep. 625.

"Therefore, looking to the sections of the statute for ourselves, we are forced to the conclusion that, reading the provisions together, being parts of one and the same act, they clearly show that the board of assessors was not required to give any notice to the taxpayer, nor was opportunity given him to be heard as of right before the assessment was finally made against him. But provision was made for notice of the assessment to the taxpayer after it was made, and in event of his dissatisfaction the arbitration was to afford a hearing to him. Such hearing was all that the statute contemplated that the taxpayer should have.

"Entertaining this view, it follows that the assessment of the board of assessors ought to have been enjoined, because Section 6 of the Act, as construed and applied in this case, denies to the complaining taxpayer due process of law."

Here, just as in the Turner case just cited, the Legislature of the State did not fix the tax itself, but committed the determination of it to a subordinate body and under the law of the case just quoted from, the right to notice and hearing could not be denied to any taxpayer. The Turner case goes even further than we ask this court to go in the determination of the question before it, because in the Turner case the taxpayer was given a right to a hearing after an assessment and tax had been levied against his property, but even then the court held that due process of law was not granted to him. In the Louisiana Statute which we object to, in this case, there is no kind of hearing whatever provided for the taxpayer either before or after the district has been created, the bonds voted or the taxes levied. This court must therefore follow the decisions which have just been quoted from, and must hold that the plaintiff herein is entitled to enjoin the collection of any tax for the payment of these Consolidated Road District Bonds for the reason that the plaintiff had no right under the statute to a notice or hearing of any kind concerning the taxes that are to be levied against its property.

Thus in the case of Road Improvement District vs. Missouri Pacific, 275 Fed. 604, the Circuit Court of Appeals of the Eighth Circuit, said:

> "The power is conferred and the duty is imposed upon a federal court sitting in equity to relieve by its decree, injunction, or other process a citizen of the United States who properly invokes its aid from an arbitrary and unwarranted exercise of the legislative power of a state, which without due process of law or compensation threatens to deprive it of all or a part of its property."

All authorities therefore agree that where special taxes or special assessments are made by subordinate board or commissions under legislative authority, to pay for special improvements, the taxpayer must have a right at some stage of

the proceedings to a hearing, and that such a hearing is not a mere matter of favor or grace but must be guaranteed and provided for in the statute providing for such special taxes or assessment.

The lower court recognized the fact that complainant was afforded no notice or hearing, but held that none was necessary under a proper application of the due process clause of the Federal Constitution. In making this ruling the District Judges followed the decision of the Fifth Circuit Court of Appeals in the case of Wight vs. Police Jury, 264 Fed. 705:

In the Wight case the court likened a special tax for the building of good roads in a local road district to a general property tax levied for the general welfare as contra-distinguished from a tax on specific property which might benefit thereby. It stated that where roads are constructed for the general good and the expense is to be met by a special property tax on all property within the district, the fact that some persons may pay small taxes and receive great benefit, while others pay considerable taxes and receive no benefits is not an inequality of the character of which the constitution takes cognizance.

This decision, involving a controversy over Louisiana road tax laws goes on to say that since this State authorizes special taxes on all property, in general, within any improvement district without considering special benefits, other decisions based on laws authorizing taxes on a basis of actual benefits are inapplicable. In other words the lower court maintains that special road taxes in Louisiana must be governed by the same general principles which apply to general taxes and that benefits are to be conclusively presumed. (R-84-85) all of which reminds us that a rose by another name smells just as sweet but you can't change the name of something else and make it smell like a rose.

We believe that the District Court fell into error in comparing a special tax for a local improvement district with general taxes levied for the purpose of maintaining the government, the police, the schools and other institutions of public necessity. No such comparison was even considered in the recent case of Browning vs. Hooper, 269 U. S. 396; 70 L. Ed. 330, which is perhaps the latest decision of the United States Supreme Court on the question of the right to a notice and hearing in special tax cases. The court in this case was not considering an apportionment of benefits in the road district, but was considering a special tax to be levied generally within the district on property according to its assessed valuation of the same nature as that which the Consolidated Road District of Bossier Parish is attempting to levy and collect from the plaintiff in this case.

Now, in the case of Browning vs. Hooper, the Supreme Court said:

> "The commissioners' court by order established the district within the metes and bounds and for the purposes set forth in the petition, and declared it to be a body corporate. On the same day the court fixed the time and place for an election. Its results was 303 votes for and 102 against the bond issue. Thereupon the court ordered the bonds to be issued, and levied the taxes.
>
> "Here, on the initiation of individuals signing the petition, a special district was carved out to furnish credit and to pay for specified improvements on designated roads wholly within the territory selected. The purpose was special, and the district will cease to exist as a body corporate upon the payment of the bond debt. It is clear that the burdens here sought to be imposed on appellants' lands are special assessments for local improvements. Embree vs. Kansas City & L. B. Road Dist. 240 U. S. 242, 247; 60 Ed. 624, 627; 36 Sup. Ct. Rep. 317; Illinois C. R. Co. vs. Decatur, 147 U. S. 190, 197, 209; 37 L. Ed. 132, 134, 138, 13 Sup. Ct. Rep. 293.

"The legislature did not create the road district, levy the tax or fix the amount to be raised. Under the act, road districts are not required to correspond with or to include any political subdivision. 135 S. W. 849; Bell County vs. Hines, —— Tex. Civ. App. —— 219 S. W. 556. There is nothing in the law to guide or to limit the action of the signers of the petition in selecting property to be assessed. Subject to the vote of a district of their own choice, the petitioners' designation is absolute.

"And plainly, the authority granted (art. 627) to issue road bonds up to one-fourth the assessed valuation and to levy taxes ratably to pay them is not a legislative determination of the rate or amount of the tax imposed on appellants' property.

"Appellants were denied all opportunity to be heard. No officer or tribunal was empowered by the law of the state to hear them, or to consider and determine whether the road improvements in question would benefit their lands. The act is repugnant to the due process clause of the 14th Amendment. Embree vs. Kansas City Road Dist. supra, 251 (60 L. Ed. 629, 36 Sup. Rep. 317)."

The Browning case, which, by the way, was cited by defendants in their brief on another point, appears to us to be parallel to the issue now before the court. The tax here was levied by a subordinate board. There was no determination that any particular property would be benefited nor was the amount of the tax on each individual's property determined by the legislature. The decision does go on to say that where a local improvement territory is selected, and the burden is spread by the legislature or by a municipality to which the State has granted full legislative powers over the subject, the owners of property in the district have no constitutional right to be heard on the question of benefits, and this is the opinion on which defendants cited the case. But it will be noticed that neither the legislature nor the Police Jury of Bossier Parish have full legislative powers on the subject. The Act of 1921

under which the District was created vests that power in the taxpayers within the district, just as the Texas statutes did in the Browning case. The Police Jury of Bossier Parish, under the Louisiana statute involved here had only the power of initiatory legislation on the subject, under Section 11 of Act 118 of 1921 the Police Jury is given authority to submit the question of the formation of the district and issuance of the bonds to the property taxpayers residing within the district and they are the parties who determine finally the boundaries of the district, the amount of the bonds, and, indirectly, the taxes to be levied for the payment of principal and interest on the same. This is so because the Act of the Louisiana Legislature just referred to provides that the taxpayers shall vote on the question as to whether or not bonds in a certain amount to run for a certain length of time, shall be levied within the district and paid through a special tax on all property within the district, the amount of the tax to be only so much as shall be sufficient to pay the principal and interest on the bonds falling due each year. If the taxpayers voted in favor of the bond issue, then the Police Jury has no alternative but to declare, by ordinance, that the road district has been created and by a second ordinance to declare that the bond issue has been carried. The property taxpayers (and that excludes corporations like the plaintiff here) by their vote determine just what property will be included in the consolidated road district, just what amount of bonds shall be issued by the district and, therefore, just what tax shall be levied on the property within the district. We can see no difference between this case and that of Browning vs. Hooper cited by the defendant. The lower court erred in failing to follow this authority.

Referring again to the comparison of special taxes for local improvements and, therefore, special benefits, with taxes for the general support of the government, we desire to state our theory of the differences in principle between these two classes

of taxes. These differences demand a distinction in the application of special improvement tax laws.

In the case of general taxes, the advantage which will accrue to a citizen from the maintenance of the police and public health departments and the general functions of State or local government can not be even approximately measured in money. It is generally conceded that all will benefit from such institutions and the inability to in any way measure such benefit warrants the imposition of such taxes irrespective of benefit. The general levy of taxes exacts contributions in return for general benefits of government and it promises nothing to the persons taxed beyond what may be anticipated from an administration of the laws for individual protection and the general public good.

But when a street is paved, a sewer constructed or a roadway built, it is possible to discover some peculiar benefit to property in the immediate vicinity and no benefit whatever to remote pieces of property. Special taxes, with a local improvement district, and special assessments are, therefore, a peculiar species of taxation, standing apart from the general burdens imposed for governmental purposes and are granted by rules and principles that do not apply generally. They are made on the assumption that a portion of the community is to be specially and peculiarly benefited in the enhancement of the value of property abutting on or lying in the vicinity of the proposed improvement. These special contributions are made in consideration of the special benefit which shall be received by persons owning property in the immediate neighborhood of the improvement.

When the Fifth Circuit Court of Appeals, therefore, held in the Wight vs. Police Jury case, 264 Fed. 705, that roads are constructed for the general good and that there is an absolute presumption of benefit, the court was confusing the

principle underlying general taxation with that underlying special taxation in local improvement districts. We concede that a part of the taxes collected by the State from its general property taxes may be used in the furtherance of the building of good roads throughout the State, but it does not follow that where a special local improvement district is created and the tax is confined and restricted to property that will be benefited by the improvement that such a special tax partakes of the nature of general taxes for governmental operation.

The idea of special benefit to property located within the special improvement district, is the only basis on which special taxes or special assessments can be levied. If the idea of special benefits did not inspire the Louisiana Legislature to provide for special taxes for such purposes, then why did the legislature require such taxes to be levied only in a specially constituted district, wherein the improvement was to be made? If the building of a road in the Consolidated Road District of Bossier Parish is a matter of general good and not a question of special benefit, then why should not the entire parish of Bossier or the entire State of Louisiana be taxed for the building of the road? Furthermore, if the building of good roads does not require the consideration of special benefits, why should the Legislature of Louisiana provide in Act 118 of 1921 that no road district should comprise the entire territory of a parish? Obviously the Legislature thought that the district within which the roads were built were specially benefited and that the general welfare was only a subsidiary matter. It accordingly restricted within narrow limits the property which might be taxed for the improvement. It forbade the making of an entire parish into a road district in order to prevent the building of roads in one part of a parish, through taxes collected on other parts where the road did not run. The idea of special taxes for special benefits underlies the whole scheme of Louisiana taxation on the subject.

In the case of K. C. S. vs. Ogden Levee District, 15 Fed. (2d) 640, the Court of Appeals of the Eighth Circuit said:

> "This court has pointed out in Thomas vs. K. C. S. Ry Co., et al, that there is no connection between general taxation and assessments for special benefits."

We believe this is the proper consideration of the matter and that when the Court of Appeals of this Circuit held in the Wight case that road taxes were like general property taxes, it overlooked the real consideration for such taxes. This being so, it was an error for the District Court to hold that no notice or hearing concerning the question of benefits should be afforded. If road taxes of the nature here involved, are like the general property taxes, then, of course, the question of benefits is presumed, but if a consideration of special benefit should be made at all in the matter, then we submit that a notice and hearing should be had and that the Supreme Court of the United States in the Browning vs. Hooper case has settled the law on this subject.

Referring again to the ruling in Browning vs. Hooper, to the effect that where a local improvement territory is selected and the burden is spread by the Legislature or by a municipality to which the State has granted full Legislative powers over the subject, the owners of property in the district have no constitutional right to be heard on the question of benefits, we desire to call the attention of the court to the fact that this had reference only to the Legislature itself or to a municipality. It does not refer to a subordinate board like a Police Jury or any road district commission. Even in case the Legislature itself or a municipality itself should create the local improvement district and levy a tax, there is a rule of law which provides that the result will be inquired into by the Federal Courts when it has the effect of depriving a citizen of his property without due process of law.

Thus in the case of Norwood vs. Baker, 172 U. S. 269, 43 L. Ed. 443, the Supreme Court held that the Legislature can not confer on any municipal corporation authority to make an assessment for benefits conclusive without giving the owner opportunity to contest the question of benefits.

In Fayerweather vs. Ritch, 195 U. S. 276, 49 L. Ed. 193, the Supreme Court said:

> "In C. B. & Q. vs. Chicago, 160 U. S. 66, we held that the fact that the parties were properly brought into court and attempted to make defense, was not absolutely conclusive upon the question of due process. We said: * * * the mere form of the proceeding instituted against the owner, even if he be permitted to defend, can not controvert the process used into due process of law, if the necessary result be to deprive him of his property without compensation."

It will thus be seen that results will be considered by the courts in any case irrespective of the forms of law used in arriving at these results.

In the case of Lancaster vs. Police Jury, 254 Fed. 189, his Honor, Judge Foster, held:

> "It is well settled that the Legislature may create taxing districts for the purpose of local improvements, such as roads, and also may delegate that authority to municipal corporations, or boards, or commissions. When this is done, the question of benefit to the land taxed is one of fact, to be finally determined by the taxing authorities, but subject, however, to the exception that the delegated body may not act arbitrarily, and impose a tax in utter disregard to the benefit to be derived by the property taxed."

We believe that the case just cited is in exact accord with the general doctrine announced by the Supreme Court of the

United States on this subject and that it should be followed in this case.

An admirable statement of the law on this same subject was made by Judge Cooley, the great tax authority, in the case of Thomas vs. Gain, reported in 24 Am. R. pages 538 and 539, which reads as follows:

> "But it is generally agreed that an assessment levied without regard to actual or probable benefits is unlawful, as constituting an attempt to appropriate private property to public uses. This idea is strongly stated in Tide-water Co. vs. Coster, 18 N. J. Eq. 519, which has often been cited with approval in other cases. It is admitted that the Legislature may prescribe the rule for the apportionment of benefits, but it is not conceded that its power in this regard is unlimited. The rule must at least be one which it is legally possible may be just and equal as between the parties assessed; if it is not conceivable that the rule prescribed is one which will apportion the burden justly, or with such proximate justice as is usually attainable in tax cases, it must fall to the ground, like any other merely arbitrary action which is supported by no principle.
>
> "It is an assessment made in entire disregard of the principle, namely, that 'those who enjoy the benefits shall equally bear the burden.' "

The defendants themselves have cited in their brief at page 50 the case of Branson vs. Bush, 251 U. S. 182; 64 L. Ed. 215, on the question of the conclusiveness of a Legislative determination as follows:

> "The rule as we have stated it was approved with the qualification which was before implied, that the Legislative determination can be assailed under the 14th Amendment only where the Legislative action is arbitrary, wholly unwarranted, a flagrant abuse, and by reason of its arbitrary character a confiscation of particular property."

This case then proceeds to cite Norwood vs. Baker, 172 U. S. 269; 43 L. Ed. 443; Myles Salt Co. vs. Iberia & St. M. District, 239 U. S. 478; 60 L. Ed. 392 and Gast Realty & Investment Co. vs. Schneider, 240 U. S. 55, 60 L. Ed. 523, in support of the qualification of the rule above quoted. When it is remembered that in these cases the court overruled a Legislative determination of benefits when none actually existed, it can readily be seen that the decision is in our favor, because the evidence here shows that whether there has been a Legislative determination on the subject or not, the result is an arbitrary, wholly unwarranted confiscation of plaintiff's property, through a tax levied to pay for a competing transportation system, which will actually take away some of the earnings and property of the petitioner.

In the case of Hancock vs. Muskogee, 250 U. S. 455, 63 L. Ed. 1083, the Supreme Court held that the Legislative discretion would be distributed if arbitrary, unwarranted or denying equal protection of the law in exercising it, or in the event of *substantial error.*

We, therefore, submit that there was no Legislative determination in this case, but that the determination was made by a local subordinate board, just as was done in the case of Browning vs. Hooper, 70 L. Ed. 330, and that even if the court should find that there was a Legislative determination of the benefits which would deny the right to petitioner for a hearing in some cases, it would not deny the right here to a consideration of the matter in the courts of the United States. This is so in view of the fact that there is an unwarranted denial of equal protection of the law and of due process of law in exercising the discretion, and substantial error has been committed in the inclusion of petitioner's property in the Consolidated Road District of Bossier Parish.

A very recent decision of your honorable court holds that no State Legislature can make a determination which would over-ride constitutional provisions. Mr. Justice Van Devanter in the case of Road Improvement District No. 1 vs. Missouri Pacific Ry. Co., 71 L. Ed. U. S. S. C. Adv. Ops., May 16, 1927, page 633, said:

> "There can be no doubt that the Legislative confirmation placed the assessment on the same plane as if it were made by the Legislature, and thereby cured any mere irregularities on the part of the assessors; but, as the Legislature could not put aside or override constitutional limitations, the confirmation did not prevent inquiry into the alleged violation of such limitations."

The defendants cite the case of Hardin vs. Police Jury, 155 La. 899; 99 Sou. 690; as an interpretation of the Louisiana statute, which the Federal Courts are bound to follow. They say this decision holds that the Louisiana statute provides for notice and a hearing in road tax matters. This decision on the whole is correct, but it goes further than the issues in the matter required it to go when it stated that "it will be noticed that in the creation and formation of road districts, consolidated or otherwise, the final authority is vested in the Police Jury, subject to the requirement of notice and hearing of those in interest, who may wish to complain." Mere dicta on the part of the court of course cannot serve as an amendment or contradiction to the plain letter of the law. This statement is not necessary to decision in the case and obviously was only made incidentally for the purpose of calling attention generally to the provisions of Act 118 of 1921. Reference to those provisions will show that in the creation of road and sub-road districts notice and hearings are provided for, but in the creation of consolidated road districts no such hearings are permitted or provided for (see paragraphs 11 and 18 of Act 118 of 1921). Now the defendants' contention that being already in one of the

road districts which has been included in the consolidated road district, the plaintiff has, therefore, no cause to complain is utterly untenable, in view of the fact that the inclusion of the petitioner's property in this Consolidated Road District presents an issue of new taxes, to run for forty years for the payment of a bond issue about ten times as large as that which existed in the former road district, where plaintiff's property is located. The mere statement of this proposition is sufficient to persuade a reasonable mind that a notice and hearing accorded plaintiff in the formation of a road district more than ten years ago, can in no wise he construed as a notice and hearing or in any way create any estoppel for the inclusion of its property in a Consolidated Road District, which carries a new governmental authority, a new bond issue, a new tax and an increased burden for other purposes than those contemplated in the original road districts, comprising a part of the Consolidated Road District.

The defendants show that in any event several hearings were had pursuant to advertised notice before the Consolidated Road District was formed, but the fact remains that such hearings were not provided by the statute as a matter *of right*, but were granted by the Police Jury of Bossier Parish merely as a matter of grace. Under the decisions cited in Londoner vs. Denver, 210 U. S. 373, 52 L. Ed. 1103; K. C. S. vs. Ogden Levee District, 15 Fed. (2d) 637, and other cases which we have already cited, complainant is not afforded due process of law for the reason that the State of Louisiana guarantees no hearing.

The plaintiff actually knew nothing of the imposition of the tax in this case until it started to pay its taxes for the year 1926. It knew nothing of the hearings that actually were held and had no right to vote at any of the elections provided for in the statute (R-38). It has had no opportunity whatever to contest the inclusion of its property within the district, or the taxing of its property for the purpose of building highways

to compete with its business. On the matter of the tax itself, there is no administrative board provided for in the statutes of the State of Louisiana, before which it could make any complaint or protest or secure any hearing relative to the matter. The only hearings which it might have secured were those that were held before the assessing authorities under the general taxation laws of the State and we will hereinafter show that insofar as the assessment of this particular tax was concerned, it had no opportunity to be heard before any of these boards on the subject. The only relief afforded the petitioner in this case is, therefore, the relief which will be accorded it by a court of equity.

The Circuit Court of Appeals of the Eighth Circuit very properly said in the case of Road Improvement District vs. Missouri Pacific, 276 Fed. 604:

> "The power is conferred and the duty is imposed upon a Federal Court sitting in equity to relieve by its decree, injunction or other process, a citizen of the United States, who properly invokes its aid, from an arbitrary and unwarranted exercise of the Legislative power of the State, which without due process of law, or compensation threatens to deprive it of all or a part of its property."

IV.

Taxation to Build Competing Highways Confiscatory.

Assignments of error Nos. 9, 10 and 11 (R-93) relate to the refusal of the lower court to hold that the property of the complainant would not be benefited but actually damaged by the imposition of taxes thereon in the defendant district, and that the imposition of road taxes on complainant's property amounts to a confiscation of its property without due process of law.

The evidence shows that the defendant plans to construct hard surfaced roads throughout the district, one of which roads runs parallel with the right-of-way of the St. Louis Southwestern Railway Co. from Bossier City, Louisiana, to Arkana, Lou-

isiana (R-42). It is further shown (R-47) that many of the roads proposed to be improved by the consolidated road district of Bossier Parish, Louisiana, converge at the Bossier City traffic bridge which leads into the City of Shreveport, and that from this point various lines of railroad and motor busses operate in competition with the St. Louis Southwestern Railway Co., thus providing within the Consolidated Road District a network of highways which will build up a competing system of motor bus transportation. (R-47).

Testimony is given by the General Passenger Agent, the Vice-President, the General Traffic Manager and the Assistant to the President of the Railway Company to the effect that in all cases where roads have been constructed parallel to railroads such construction has resulted in a decrease in the railroad business, particularly its local traffic, and it is the opinion of these officials that the construction of such roads in the defendant district would materially decrease the business of the Railway Company in Louisiana, and the construction of such roads would not in any way benefit the railway company or increase its value (R-43, 46).

Mr. Millard, the assistant to the president, states (R-45) that he is by profession an engineer accountant and has been in charge of the accounts and statistics of the St. Louis Southwestern Railway Co. since the year 1920, and that prior to that time he was Statistician for the Statistical Bureau of all western railroads located at Chicago. This witness has made many statistical analyses of the passenger traffic of the St. Louis Southwestern Railway Co. extending over the period from 1891 down to 1926. He states that during the past nine years there has been a constant and growing decrease in the passenger traffic and in the revenues of the complainant company. His analysis of these decreases (R-46) shows that they are due entirely to the falling off of local traffic, and that in each case the decrease of revenue is due to the competition of

private automobiles and busses along the improved highway. Not only is there a decrease in passenger traffic but there is likewise a substantial falling off in freight revenue due to the transportation by trucks, both privately owned and in carrier service.

The defendant has made no serious effort to contradict this testimony, and the lower court took for granted the truth of complainant's assertion that it would not be benefited in any way by the building of these hard surfaced highways. One of defendant's witnesses intimated that the building of hard surfaced highways will eventually enhance the value of railroad property located within the defendant district. However, it stands to reason that the railroad right-of-way, rolling stock and other equipment will have its value enhanced only in proportion as its ability to earn revenue is increased. As Mr. Green states (R-44) highways do not increase the value of improvements erected on land, and since the largest part of complainant's property consists of trackage, depots and rolling stock, it is needless to assert that complainant's property will not be enhanced in value by a competing road system.

At any rate your Honors have taken judicial notice of the fact that parallel hard surfaced highways are a detriment to the freight and passenger business of a railroad carrier. Again quoting from Road Improvement District vs. Missouri Pacific Railway Co., 71 L. Ed. U. S. S. C. Adv. Ops., May 16, 1927, page 634:

> "That such a loss in local traffic usually ensues when hard-surface roads adapted to use by motor-driven vehicles are constructed practically parallel to railroads is not only shown by the testimony but is common knowledge. It received distinct recognition in the President's message of December 8, 1922, to Congress."

In view of these facts plaintiff contends that the inclusion of its property in this road district and the taxing of its prop-

erty for the building of the roads in question amounts to a confiscation of its property and denial of due process of law, and the equal protection of the laws.

Our contention on this subject is clearly supported by the decision of the Circuit Court of Appeals of the Eighth Circuit in the case of Board of Directors of Miller Levee Dist. No. 2 vs. Prairie Company, 292 Fed. 474. The following paragraphs from the syllabus of that case very forcefully state the doctrine of law decided by the court:

> "The levy of a special tax by a levee district on the property of a pipe line company on a valuation which equaled or exceeded its actual value, while other real property in the district was assessed at from 10 to 16 per cent of actual value, held palpably arbitrary and discriminatory as to amount to a denial of the equal protection of the law.
>
> "A levee district may not constitutionally levy a special tax for the cost of an improvement on property which is not benefitted by the improvement, or the benefit to which is merely conjectural, on a basis of equality with property clearly benefited."

The courts of the United States have generally held that property can not be subjected to a special improvement tax unless some benefit can reasonably result from the improvements in question and they have consistently held that such benefits must not be vague and speculative, but should have a reasonable and definite basis.

In the case of Kansas City Southern Railway Company vs. Ogden Levee District, 15 Fed. (2d) 637 decided on October 29, 1926, the defendant contended that by the building of a levee and the reclaiming of land, greater crops would be raised along the line of the complaining railway company which would result in an increase of passenger and freight traffic but the court said:

"The question of increased passenger or freight traffic, especially in these days of automobiles and auto trucks is a speculative and doubtful one. In the case of Thomas vs. Kansas City Southern Railway Company, 261 U. S. 481, the Court considered the indirect benefit to the railroad from the establishment of a drainage district and said 'the railroad would derive some measure of indirect benefit,' but that 'vague speculation as to future increased traffic receipts will not justify a basis of taxation which necessarily produces manifest inequality.'"

In both of the Kansas City Southern cases involved in the above citation, there was a probability of increased traffic which was, however, to a certain extent conjectural and the court held that to tax the railway company for such speculative benefits would violate the due process clause of the 14th Amendment to the Constitution.

The case which we now present to the court shows a more palpably excessive and unjust taxation, in that the proposed roadway will be a competing artery of traffic and will undoubtedly take away from the railway company some of its passenger traffic and freight earnings and actually result in damage to the petitioner. If an injunction should issue in the K. C. S. cases, as the court held, that it should, how much more evident it is that an injunction to prevent a palpably discriminatory tax should issue in this case.

Nothing is better settled than that an assessment of improvement taxes substantially in excess of the benefits conferred is an abuse of the judicial discretion to assess them, and that it is also void as a deprivation of property without due process of law, in violation of the 14th Amendment of the Constitution of the United States.

In the case of Norwood vs. Baker, 172 U. S. 269; 43 L. Ed. 443, where the entire cost of opening up a street had been

assessed as a benefit upon the land through which it was opened, the court laid down the rule that a special assessment against any particular property owner in substantial excess of the benefits received to the extent of such excess is a deprivation of property without compensation.

In Martin vs. District of Columbia, 205 U. S. 135, 51 L. Ed. 743, an assessment upon a front foot basis was set aside, because "the chance of the cost exceeding the benefits and the amount of the not improbable excess were great."

In the case of Myles Salt Company vs. Board of Commissioners, 239 U. S. 478, 60 L. Ed. 392, quoted from at the beginning of this brief, it was held that the assessment for drainage purposes against an island which can receive no benefits direct or indirect from the improvement, other than such as might accrue from the general benefits derived by the surrounding territory, was an infringement of one's rights under the 14th Amendment of the United States Constitution.

The District Court therefore erred in refusing to consider complainant's averments that its property would be confiscated by the tax in question.

V.

Discrimination in Assessment Violates 14th Amendment U. S. Constitution

Appellant's assignment of error No. 8 (R-93) supports the complainant's fifth reason urged against the illegality of the tax assessed against its property in the defendant district, and that is that the discrimination and assessment whereby complainant's property is taxed at its full value while other property is assessed at only one-half of its value unlawfully deprives the complainant of the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

Even if the railroad property of petitioner was benefited and even if proper notice and hearing was provided before the tax became final against its property, the basis of the tax on the assessed valuation of petitioner's property results in a gross inequality which is palpably unjust, palpably unreasonable and palpably discriminatory.

The evidence shows (R-34 to 41) that the property of the railroad company is assessed at 100% of its value, whereas other property generally is assessed at from 40% to 60% of its value. This disparity in assessment may be compared to that in K. C. S. vs. Ogden Levee District, 15 Fed. (2d) 637:

> "Here the property of appellants was assessed at over 50% of its value, including improvements * * * while the farm lands were assessed at from 5% to 15% of their value, excluding improvements. It would be difficult to imagine a more palpable discrimination than this."

This discrimination may also be compared with that which was made in the case of Sioux City Bridge Company vs Dakota, 260 U. S. 445, 67 L. Ed. 343:

> "The County Assessor and the County Board of Equalization improperly executed the constitution and tax laws of the State and intentionally and arbitrarily assessed the Bridge Company's property at 100% of its true value and all other real estate and its improvements in the County at 55%.
>
> "This court holds that the right of the taxpayer whose property alone is taxed at 100% of its true value is to have its assessment reduced to the percentage of that value at which the others are taxed, even though this is a departure from the requirement of statute."

In M. P. vs. Road Improvement District, 288 Fed. 505, farm lands were assessed at from 15% to 50% of their value,

while the railroad property was assessed for at least 60% of its value and the court held that the result was arbitrary, inequitable and grossly unjust and "the result, we think, demonstrates that the action of the commissioners was palpably arbitrary and the plain abuse and violative of the Fourteenth Amendment."

The general principle of law is thus stated in the case of Gast Railroad Company vs Schneider, 240 U. S. 57, 60 L. Ed. 525:

> "But, as is implied by Houck vs Little River Drainage District, if the law is of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred, the law cannot stand against the complaint of one so taxed in fact."

Again in the case of K. C. S. vs. Road Improvement District No. 6, 256 U. S. 658; 65 L. Ed. 1156, the Supreme Court held:

> "If, however, the statute providing for the tax is 'of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred, the law cannot stand against the complaint of one so taxed in fact.'
>
> "The statute under consideration prescribes no definite standard for determining benefits from proposed improvements.
>
> "It is doubtful whether any very substantial appreciation in value of the railroad property within the district will result from the improvements; and very clearly it cannot be taxed upon some fanciful view of future earnings and distributed values, while all other property is assessed solely according to area and position. Railroad

property may not be burdened for local improvements upon a basis so wholly different from that used for ascertaining the contribution demanded of individual owners as necessarily to produce manifest inequality. Equal protection of the law must be extended to all."

The same doctrine was applied in the case of Keokuk Bridge Company vs. Salm, 258 U. S. 123, 66 L. Ed. 498:

> "Since the appellant asserted a claim arising under the Federal Constitution, the district court had jurisdiction although there was no diversity of citizenship. Discrimination in taxation, effected by systematic inequality of assessment, may violate the 14th Amendment. Greene vs. Louisville & Interurban R. Co., 244 U. S. 499, 502; 61 L. Ed. 1280, 1283, 37 Sup. Ct. Rep. 673, Ann. Cas 1917 E, 88."

The case of Missouri Pacific vs Road Improvement District, 288 Fed. 505, declares the principle thus:

> "It is no answer to this unjust and unequal distribution of burdens to say that the farm lands were assessed a benefit of 24% of their assessed value ($10.00 per acre) for general taxation, while appellant's property was only assessed a average of less than 10% of its assessed value. This resulted in burdening appellant's property for the improvement more than eighty times as much as that placed on farm lands, when the two classes of property are considered as acreage. The result, we think demonstrates that the action of the commissioners was 'palpably artibrary and a plain abuse,' and violative of the Fourteenth Amendment. Houck vs District, 239 U. S. 254, 36 Sup. Ct. 58, 60 L. Ed. 266; Myles Salt Co. vs. Board of Commissioners, 239 U. S. 478; 36 Sup. Ct. 204; 60 L. Ed. 392, L. R. A. 1918 E. 190."

These cases plainly substantiate the petitioner's contention here and the Lower Court erred in refusing to issue the injunction prayed for.

Defendants practically concede that these decisions correctly state the law and that complainant would be entitled to relief here on this account, but defendants say that we cannot go before a court of equity because we have not exhausted our relief before the administrative boards of the State. The answer sets forth and the evidence shows that the assessing boards of the State met at various times for the purpose of considering assessments and that the complainant did not appear before any of these boards for the purpose of contesting its assessment. Our answer to this contention is, first, that these boards considered assessments for purposes of general taxation and that the railroad company had no right to complain of its assessment inasmuch as the assessment was made in compliance with the law that all property should be assessed at 100% of its actual cash value. But even if the railroad company might have complained before the assessing boards, that its property was valued at a higher percentage than other property similarly situated, it had no opportunity to make such complaint relative to the assessment for the payment of the special tax in question here.

The evidence shows that the final hearing on assessments was held before the Louisiana Tax Commission on July 9, 1926, (R-58) whereas the special tax of seven mills was levied by the Consolidated Road District of Bossier Parish on August 10, 1926, and not promulgated and made effective as law until about October 1st. (R-56).

When the tax was levied, therefore, the assessing boards had already met and no provision whatever was made for any hearing or contest as against the use of this assessment as a basis for the special tax levied in the Consolidated Road District.

The petitioner at no stage of the proceedings had an opportunity to be heard on this subject.

It is no answer for the defendants to say that we are estopped from denying that our assessment for purposes of general taxation is correct, because in the first place we acknowledge that it is in accordance with the law of the State. In the second place it is one thing to be willing to pay general taxes on an unjust and discriminatory assessment, and another thing entirely different to be required to submit to that assessment for the purpose of constructing a competing highway system, from which no benefits are derived, but actual detriment entailed. The principle of estoppel nowhere enters into the consideration of the case. In the K. C. S. vs. Ogden Levee District, 15 Fed. (2d) 637, the plea of estoppel was filed on the ground that the tax in question had been paid by the railway company on an arbitrary and unreasonable assessment for fourteen years, but the court said:

> "We are unable to see any prejudice to appellees, or to the bond holders, who are not parties here, when the action of appellants who, having paid unjust taxes for fourteen years, now object to a continuance of such payments."

The St. Louis Southwestern Railway Company was willing to bear an unequal share of the taxation in Bossier Parish for general purposes. It was willing to contribute that much to the upbuilding of the general welfare of the community, but it was not willing to bear this unequal burden, nor any burden whatever for that matter, for the support of a transportation system, which would take earnings out of its treasury and property away from its possession to serve its private competitors.

The difference between assessments for general taxation purposes and for special taxes or assessments has already been emphasized in this brief, but we might add what was said in the K. C. S. vs Ogden Levee District case, 15 Fed. (2d) 637;

"This court has heretofore declared that assessed valuation for general taxation bears no relationship to the proper basis for special assessment of benefits."

We might add that assessed valuation for general taxation bears no relationship to assessments used in the levying of special taxes for special benefits received, and that certainly an assent to a valuation for general taxation purposes does not estop taxpayers from contesting that valuation when a special tax of an inimical nature is added to the general taxes imposed and sought to be enforced on the basis of the unequal assessment. The wrong must be righted somewhere and the complainant may object, when in its opinion the matter has gone too far.

But the defendants say that we cannot contest the inclusion of our property within the Consolidated Road District, because Act 46 of 1921 enacted by the Legislature of Louisiana provides that all ordinances passed by the governing body of any district, relative to bonds or taxes voted therein, shall be subject to attack only within thirty days following the date of their promulgation. Defendants say we cannot attack the assessment of our property for the purposes of this special tax for the further reason that Act 97 of 1924 of Louisiana provides that a taxpayer can contest an assessment against his property only within thirty days following the date of the filing of the rolls and that the rolls in this case were filed on October 6, 1926, whereas this action was begun in December of 1926.

Taking the prescription provided in the Act of 1924, first we may see that this prescription is a part of the law of the State relative to general taxation and that furthermore it is levelled only at the right of the complainant to contest the validity of its assessment. Obviously that statute can have nothing to do with the case, because under the law of the State of Louisiana, our assessment was made on the basis of its actual cash value. We, therefore, have no right to complain. As

soon as we go before the assessing board of the State or into the courts of the State, alleging that our property is assessed at its actual cash value, we admit ourselves out of court, because the defendant's reply is that that is just what the law requires. Thus Section 20 of Act 170 of 1898 enacted by the Legislature of Louisiana reads:

> "All real estate and personal property subject to taxation, as enumerated by Section 1, of this act, and not exempt by law, shall be estimated by the assessors of the several parishes of the State, parish of Orleans excepted, at its actual cash value upon the blank lists furnished by the Auditor of Public Accounts, in accordance with this Act."

We must of necessity seek the relief which the Supreme Court of the United States granted in the case of Sioux City Bridge Company vs. Dakota, 260 U. S. 445; 67 L. Ed. 343. We are entitled to the relief which only this court of equity can afford us, not on account of the amount of the assessment, but the discrimination in assessment.

Now, referring to the period of prescription provided by Act 46 of 1921 limiting attacks on all ordinances levying special taxes to 30 days, we may say that we are not attacking the regularity or validity of any ordinance passed by the Police Jury or by the Consolidated Road District of Bossier Parish, Louisiana. As far as we have been able to determine the Bossier Parish authorities have carried out the provisions of the law in the passing of their ordinances and we have no reason to attack the legality or regularity of the same. What we are asserting is a right guaranteed us by the Constitution of the United States of America under the due process and equal protection of the laws provision. We say that the action of the Police Jury of Bossier Parish and of the Consolidated Road District of Bossier Parish may be perfectly valid and applicable in so far as the resident taxpayers, qualified to vote, are

concerned, and yet be illegal insofar as the complainant here is concerned, because they result in discriminations, in denial of due process and in the equal protection of the laws, in violation of the Constitution of the United States.

On these matters we may always be heard irrespective of statutes of prescription or repose passed by the legislature of the State of Louisiana, provided that we have not estopped ourselves through laches or otherwise, from doing so.

The case of Wight vs. Police Jury, 264 Fed. 705 quoting from the syllabus:

> "Act. La. No. 256 of 1910, Sec. 17, though construed as entirely depriving taxpayers after 60 days of the right to attack an election on the question of issuing bonds and the resulting bonds and taxes for non-compliance with the Constitution or laws of the State, is not necessarily invalid under the Constitution of the United States, as it would still be open to the taxpayer to assert any right he might have under the Constitution and laws of the United States.
>
> "It is the duty of a state court to support and enforce the Constitution and laws of the United States, and even though a special law of limitations precludes consideration of objections to a bond issue based upon the state Constitution and laws, rights under the Constitution and laws of the United States may still be asserted.
>
> "While the laws of limitation and prescription of the states are ordinarily applied by the courts of the United States Act La. No. 256 of 1910, Sec. 17, does not preclude consideration by the federal courts of any objection to a bond issue election arising out of rights asserted under the Constitution and laws of the United States."

The Wight case is a full and complete answer to every plea of prescription urged by the defendant in this case. Complainant's rights under the Federal Constitution must be pre-

served irrespective of the State Statutes of prescription. The lower court therefore erred in sustaining Defendant's pleas urging the bar of the Statutes of limitation.

VI

Tax Imposes Undue Burden on Interstate Commerce in Violation of Commerce Clause of U. S. Constitution

In assignment of error No. 10 the appellant raises its sixth ground of attack against the taxes levied by the defendant district charging that the confiscation of complainant's revenue in the form of taxes to pay for the construction of a competing system of hard surfaced highways imposes an undue burden on its interstate commerce in violation of Sec. 8 of Art. 1 of the Constitution of the United States.

The proof shows (R-42) that complainant's property located within the Consolidated Road District is an integral part of an interstate transportation line and that all of it is constantly used in transportation of interstate commerce that the assessment and tax complained of unlawfully burdens such interstate commerce by imposing upon the revenues accruing therefrom an unlawful, unjust and discriminatory tax in violation of the constitution of the United States providing for the regulation of commerce between the States. Article 1, Section 8 of the Constitution, among other things provides:

> "Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes."

In the case of Hall vs. DeCueir, 95 U. S. 488, 24 L. Ed. 547, the Supreme Court held that any State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom encroaches upon the exclusive power of Congress.

In the case of Evansville Brewing Assn., vs Excise Commission of Jefferson County, 225 Fed. 204, it was held that a State statute can not authorize a commission to so act as to interfere with interstate commerce.

In Northern Securities Co., vs U. S. 193, U. S. 350, 48 L. Ed. 679, the Supreme Court said that no State can endow any of its corporations, or any combination of its citizens with authority to restrain interstate or international commerce or to disobey the National will as manifested in local enactments of commerce.

In Weber vs. Virginia, 103 U. S. 351, 26 L. Ed. 565, the Supreme Court held that commerce among the States must be free from any discriminating regulations and burdens imposed by local authority and that foreign corporations and foreign products must be treated on an equality with local corporations and taxpayers and that an arbitrary discrimination would violate the provisions of the Constitution of the United States.

Furthermore in the case of Minneapolis Brewing Co. vs. M'Gillivray, 104 Fed. 266, the doctrine was announced that a State can not even in the exercise of its police power discriminate against interstate commerce.

In 5th R. C. L. 789, it is said:

> "Under the guise however of exerting its right to tax property used in interstate commerce, the State can not add the burden of a license or other tax on the privilege of using, constructing or operating an instrumentality of interstate or international commerce or for the carrying on of such commerce."

Again this same authority, 5 R. C. L., at page 801 states this doctrine:

"A state is without power, by prohibition, regulation or taxation, to impose upon the products of other states, brought therein for sale or use, more onerous public burdens than it imposes upon like products of its own territory, nor can a state discriminate, in the matter of trade regulations, in favor of its citizens and against the citizens of other states.

"Prescribing different modes of collecting a tax is not a discrimination, but there is an invalid discrimination though there may be a tax alike on the sale of articles of domestic origin as well as of like articles from outside the state, when, by reason of the method of levying the tax, an advantage is given to the domestic product and to the domestic manufacturers and dealers."

Another case in point is that of Glouchester Ferry vs. Pennsylvania, 114 U. S. 196, 29 L. Ed. 164.

The doctrine is thus stated in 12 C. J. 59:

"A state may not by discriminating legislation, the imposition of burdensome conditions, or in any other way, fetter, abridge, or interfere with the right of a foreign corporation to engage in interstate commerce."

In the light of the above decisions, it is evident that the act of the taxing authorities for the Parish of Bossier and State of Louisiana, in assessing petitioner's property for benefits which it does not receive and in assessing its property at a higher rate for purposes of taxation than other property generally is assessed violates not only the 14th Amendment of the Constitution of the United States, but the provisions of Article 1, Section 8 of the Constitution, which in effect prohibits the States from unduly burdening or discriminating against the agencies engaged in interstate commerce.

The taxing of petitioner's property on a discriminatory assessment and for the construction of an improvement that

will decrease its revenues and take from it some of its earnings, is a palpable burden upon and discrimination against the interstate business of this common carrier.

We therefore submit that the lower court was in error in refusing to grant a preliminary injunction, and that this decision should be reversed and there should be judgment for the complainant declaring illegal and void the taxes assessed against its property in the defendant district, that a writ of injunction issue directed to J. H. Nattin, Tax Collector and to the Consolidated Road District of Bossier Parish, Louisiana, enjoining and restraining them and each of them from levying or assessing any special tax of assessments against the property of the St. Louis Southwestern Railway Company and that of the Shreveport Bridge and Terminal Company for the payment of the bonds issued by said district.

Respectfully submitted,

J. R. TURNEY,

W. S. WILKINSON,

J. D. WILKINSON,

C. H. LEWIS.

Solicitors for Complainant and Appellant.

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MAY IT PLEASE THE COURT:

We desire to submit this supplemental brief to present some additional reasons why your Honors should grant the appellant relief in this case and to modify to some extent a statement made by the writer during the course of oral argument.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1927

No. 263

IN EQUITY.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Defendant in Error,

versus

J. H. NATTIN, TAX COLLECTOR, CONSOLIDATED ROAD DISTRICT OF THE PARISH OF BOSSIER, LOUISIANA,
Defendant-Appellee.

Appeal from the District Court of the United States for the Western District of Louisiana.

Honorable Rufus E. Foster, Circuit Judge, Presiding; District Judges Ben C. Dawkins and Louis H. Burns, Sitting.

SUPPLEMENTAL BRIEF OF PLAINTIFF-APPELLANT.

MAY IT PLEASE THE COURT:

We desire to submit this supplemental brief to present some additional reasons why your Honors should grant the appellant relief in this case and to modify to some extent a statement made by the writer during the course of oral argument.

The court questioned plaintiff's counsel as to what purposes the proceeds of a consolidated road district bond issue might be expended for under the provisions of the Louisiana law, Act 118 of 1921, Acts of Louisiana. Counsel stated that although the law would seem to permit the funds to be used in the building of roads generally throughout the district, its governing authority had specially designated the roads to be built in its ordinance submitting the bond issue and proposition to create the district to the people. In view of the wording of the law and its purposes, we think it would be proper to state that not only did the police jury select in advance the roads to be improved, extended or constructed, but the law intended and required that it should be created for the express purpose of building and improving specially designated roads.

Section 11 of Act 118 of 1921 reads in part as follows:

> "That the procedure to create a Consolidated Road District should be as follows:
>
> The Police Jury shall pass an ordinance or resolution which shall specify (but need not describe) the existing road districts, or sub-road districts, to be included in the Consolidated Road District, and their respective indebtedness both bonded and floating, shall declare that it is advisable to consolidate the roads of the several districts (and when such is the fact, certain unorganized road territory of the parish) into a consolidated road system; and shall make an estimate of the amount of new money presently needed to enlarge and extend the district system or systems, but the amount of new money when added to the aggregate of the bonded and floating debt of the road districts included in the consolidated district shall not exceed ten per cent of the assessed valuation of the Consolidated Road District."

Since the provision just quoted requires that the Police Jury make an estimate of the amount of money necessary

to enlarge and extend the existing roads in the proposed consolidated district, the law naturally would intend or require that a definite scheme for improvement should cover existing roads in the various districts and specially designated extensions or additions thereto, and should also specify in detail courses, widths, materials, etc., from which accurate estimates might be made as a basis for the bond issue that would be required. If the bond issue is calculated upon certain designated and specified projects, and the approval of the bond issue by the people in and of itself operates to create the district suggested by the Police Jury, then it is reasonable and logical to say that the district was created by law for the purpose of constructing particular roads instead of for the improvement or building of roads generally within its limits.

The Police Jury of Bossier so interpreted the law when it caused a map of the proposed consolidated district to be prepared prior to the election, on which map "was shown the proposed roads to be constructed in said district, and the amount of money to be expended upon each road." (R. 54-55). See Exhibit S opposite page 57 of the Record.

The fact that the bonds are issued and taxes levied for the building of specially selected highways is of some importance in determining the exact nature of the governing authority of the Consolidated Road District of Bossier Parish, Louisiana, and the extent of its legislative powers. We will present your Honors facts and authorities to show that the Police Jury in such capacity assumes the quality of an administrative body of limited authority rather than that of a legislative agency of the State clothed with full legislative power over the subject of roads and highways within its jurisdiction.

Paragraph (a) of Section 11 of Louisiana, Act 118 of 1921, prescribes the first step to be taken in the creation of a Consolidated Road District. The procedure thereafter is as follows:

(b) "Such ordinance (specifying boundaries of district and amount of money required) shall be published once in the official journal of the parish. (Words in parenthesis inserted by writer).

(c) No less than ten days after the publication of such ordinance the Police Jury shall call an election in such consolidated district, which election shall be called, proclaimed, held, and promulgated in all particulars, as near as may be, in the manner prescribed by the general laws in relation to incurring debt and issuing bonds, at which election shall be submitted the question of the isuance of Consolidated Road Disctrict Bonds, (1) in a specified sum (which shall be the aggregate of the district or districts debt and the new money as declared in the ordinance or resolution described in paragraph 'a' of this section), (2) bearing interest not exceeding a specified rate (which shall be the highest rates which any road bonds of any of the road districts bear), (3) payable annually or semiannually as the police jury may decide, and (4) maturing not more than forty (40) years after the date of the issuance thereof, for the purpose of acquiring and constructing roads the title to which shall vest in the Consolidated Road District.

(d) If a majority in number and amount of the qualified property taxpayers who vote at such election shall vote in favor of such bond, the Police Jury shall promulgate and publish the result of such election and shall thereupon adopt and cause to be published in the official journal two ordinances: the first shall find and declare that the Consolidated Road District has been created, and the second shall provide for the issuance of Consolidated Road District bonds as hereinafter provided."

"Section 12.

After provision is made for the issuance of Consolidated Road District Liquidation Bonds the police

jury, either in the same or in another ordinance or ordinances, may provide for the issuance and sale of Consolidated Road District Bonds of another series to provide new money for road purposes."

"Section 14.

That it shall be the duty of the police jury in apt time and manner to levy a tax sufficient to pay the interest upon all the bonds of each series as it accrues and to pay the principal as it matures."

"Section 18.

That the bonds of any road district or Consolidated Road District, authorized by a majority of number and amount of property taxpayers voting at said election, be, and the same are hereby approved, ratified and confirmed, and their validity shall not be questioned."

From the provisions of the law just quoted, it will be seen that the creation and existence of the Consolidated Road District is made to depend upon the voting of the bond issue by the people. The Police Jury has no power to do anything but suggest to the people the limits of the district, roads to be improved, and amount of bonds necessary for the purpose. The voters themselves (excluding corporations like plaintiff), in any suggested district, by their ballot determine finally all the legislative details concerning the creation of the district. Thereafter the Police Jury acts only as a quasi-judicial or administrative board. It must sell the bonds at par and levy each year a tax sufficient to pay the principal of maturing bonds and all interest charges. It can levy no other taxes and issue no other bonds. The assessment on which the tax is levied is the assessment made by the taxing authorities for purposes of general taxation. It must proceed to carry out the scheme of road improvement and execute contracts for such purpose under the general laws of the State. It can pass no laws for the government or administration of the highways, its powers being entirely restricted to the proper spending of the proceeds of the bond

issue under the limitations and requirements of general state laws.

When the bonds are all spent and paid for the district becomes ipso facto defunct. It is not created for any other purpose than to carry into execution the mandate of the people expressed by their vote at the election.

The Supreme Court of Louisiana has therefore referred to Road Districts as the lowest type of public corporations. In the case of Farmer vs. Myles, 106 La. Ann. 340, 341, this court enunciated the following doctrine:

> "Dillon, in his work on Municipal Corporations, Section 23, draws the distinction between municipal corporations proper, such as a city, and quasi corporations such as counties (parishes)."
>
> "He refers to 'School districts' and to 'road districts' and says 'they are but instrumentalities of the State and the State incorporates them that they may more effectually discharge their appointed duty; they are involuntary political or civil divisions of the State, created by general laws to aid in the administration of government, and so are counties. They are purely auxiliaries of the State, and to the general statutes of the State they owe their creation, and the statutes confer upon them all the liabilities to which they are subject. Considered with respect to the limited number of their corporate powers, the bodies above named rank low in the grade of corporate existence, and have been frequently termed quasi corporations. This designation distinguishes them on the one hand from private corporations aggregate, and on the other hand from municipal corporations proper, such as cities or towns acting under charters or incorporating statutes, and which are invested with more powers and endowed with more functions and a larger measure of corporate life."

The case just quoted applied its ruling to the powers of police juries in respect to roads. In fact the doctrine has been generally applied to police juries in the State of Louisiana. The case of Parish vs. Gaddis, 34 Ann. 931-932, declares:

> "Parishes, like counties in other States, are involuntary political or civil divisions of the State, designed to aid in the administration of government, as State auxiliaries or functionaries, possessing no other powers than those delegated, ranking low down in the scale of corporate existence, and well distinguishable from municipal corporations proper, which are vested with more extensive powers and endowed with more important functions and a larger measure of corporate life."
>
> "They do not acquire for themselves as a political organization. They acquire for the benefit of the public, of the people, particularly the local community, which is represented primarily by the State, and secondarily by them, but so far only as the State has delegated to them the power to do so. As State auxiliaries, they cannot dispose of public property unless with the formal sanction of the State, and even then, in those cases only in which the State, violating no trust and no contract, and infringing the rights of no one, could herself legally act. Creatures, they are wholly dependent upon and controlled by their creator. They have no life, no attribute, no power, no rights, no obligations, but such as have been conferred or imposed upon them."

Cooley on Taxation, Section 130, says: "A specially created district has no inherent power to tax * * * It has no power to tax except insofar as the power is clearly delegated."

In view ofthe fact that the Police Jury of the Parish, either in the creation or in the governing of a Consolidated Road District has no exclusive legislative power whatever, all of its powers in this respect being initiatory and subject to the will of the people; and in view of the fact that the Louisiana law limits its authority to such an extent that its actions are purely administrative, we submit that the rule announced in the case of Londoner vs. Denver, 210 U. S. 377, 52 Law Edition 1112, is applicable. We read what your Honors said in that case:

> "Where the legislature of a State instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing. But even here a hearing, in its very essence, demands that he who is entitled to it shall have the right to support his allegations by argument however brief; and, if need be, by proof, however informal."

Commenting upon the case of Londoner vs. Denver and other decisions of the Supreme Court of the United States, the Federal Circuit Court for the Eighth Circuit said, in K. C. S. vs. Ogden Levee District, 15 Fed. (2nd) 637:

> "Such hearing is not a mere matter of favor or grace with those entrusted with the assessments."

Your Honors have applied the rule stated in Londoner vs. Denver to various subordinate bodies as follows:

Municipal Corporations—Cities—Londoner vs. Denver, 210 U. S. 377; 52 L. E. 1112.

Incorporated Levee District K. C. S. vs. Ogden Levee District, 15 F. (2d) 637.

nty Board as Governing Authority for Drainage District, 164 U. S. 112; 41 L. E. 387 (Fallbrook Irrigation District vs. Bradley).

rd of Assessors with full power—Turner vs. Wade, 254 U. S. 65; 65 L. E. 136.

Road District—Body corporate with full powers—Browning & Hooper, 269 U. S. 396; 70 L. E. 330.

Municipal Corporations—Cities—with full powers over streets—Norwood vs. Baker, 172 U. S. 269; 43 L. E. 443.

We, therefore, submit that in the creation of the Con-dated Road District of Bossier Parish, Louisiana, com-inant was entitled to a hearing of some sort before the trict was created, and that this case is, with slight ex-tion, identical in principle as the case of Browning vs. oper, 269 U. S. 396, 70 Law Edition 330, wherein your nors held that a taxpayer was entitled to a hearing be-e his property was included in and taxed by a road dis-t similarly created. In the Browning case no legislative ly determined the district, or the amount of the bonds, the tax. The district was created on petition of a num-of the taxpayers within the district, and the amount the bonds and tax were likewise subject to the vote of people just as in the case here.

In the Browning case, the road district did not coincide h the limits of any political subdivision of the State; ther does the defendant district here coincide with any itical subdivision of the State of Louisiana.

In both cases, the road districts, although endowed h corporate existence under the statutes of the State, tomatically cease to exist when their indebtedness is fully d.

Neither here nor in the Browning case was any notice hearing provided in the statute authorizing the creation a district and in both cases the powers and duties of the verning body of the district following the vote of the peo-became merely administrative and perfunctory.

We, therefore, submit that the complainant was entitled to a hearing of some sort at some stage of the proceedings for the creation of the Consolidated Road District of Bossier Parish, Louisiana, and that Act 118 of 1921 of the Legislature of Louisiana in denying its right to such a hearing, denies it due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The complainant should have been afforded a hearing as to whether or not its property should be included within the Consolidated Road District, or as to whether the district should be created at all. It should have had an opportunity to present evidence not only on these points, but on the question as to the amount of bonds to be issued if its property was to be included in the district, and consequently the amount of the tax which would be levied annually on its property.

In our original brief, we went rather fully into the proposition that such taxing districts, while levying an ad valorem tax generally on all property in any district were nevertheless created with the idea of special benefit to the property located within the district. We will advance some additional reasons why benefits should be considered, and why the complainant should have had an opportunity to be heard on this subject.

Act 118 of 1921 in Section 2, provides for a hearing to all interested taxpayers whenever a road district, or a subroad district is created. However, we called the attention of the court to the fact in our original brief, that no such hearing was provided when a Consolidated Road District was created, although such Consolidated Road District is a separate entity from the road districts of which it may be composed, and is created for the incurring of a new indebtedness and a new tax on the property within its imits. The Act of the Louisiana Legislature just referred to, after providing for a hearing in Section 2, makes the following provision concerning the hearing to be had in the creation of

road and sub-road districts as contradistinguished from Consolidated Road Districts:

> "The Police Jury shall hear all objections at the time appointed, or at any time to which the hearing thereof may be adjourned and pass upon the same, and its decision thereon shall be final and conclusive.
>
> At such hearing the Police Jury may change the boundaries of the proposed district by excluding therefrom the lands of the persons objecting or by including therein the lands of persons petitioning to be included therein, and after disposing of all objections, the Police Jury shall, if it determine to create such district, adopt a resolution finally fixing the general boundaries of the district."

The section just quoted is obviously written for the benefit of those taxpayers whose property might be included in a road district without a resultant benefit. Otherwise, there can be no good reason for hearing the objections of taxpayers to the creation of the district, except the reason that without such a hearing due process of law would not be guaranteed the taxpayer. The only objection that Section 3 of the Act would contemplate from any taxpayer would naturally be that his property should not be taxed for the building or improvement of the roads. Naturally, the only objection that the taxpayer would urge to the inclusion of his property in the district would be that it was too far away from the contemplated roads, or that for some other reason peculiar to his property, it cannot be benefitted by the improvement.

The Supreme Court of Louisiana has held that in taxing districts of this sort a hearing on the question of benefit is necessary to due process of law. In the case of Shaw vs. Board of Commissioners, 138 La. 932, 70 So. 910, the Louisiana Court said:

> "Plaintiff cannot be compelled to pay for the draining of other lands in the district in which his property has been illegally and arbitrarily included,

> and when they are not being benefitted directly or indirectly by drainage. If that were done, it would be the taking of plaintiff's property without due process of law."

It is true that in the cited case a drainage district was involved, and the district was to include lands benefitted by the drainage, but the point of the case is that taxpayers were entitled to a hearing in a Louisiana taxing district of this sort before the district was finally created, any legislative determination of the Police Jury to the contrary notwithstanding. We think this case is authority in Louisiana for the proposition that the courts should set aside the creation of any special taxing district where a hearing was not afforded a taxpayer concerning the inclusion of his property, although the governing authority of the district happens to be the Police Jury of the parish, and the ad valorem tax happens to be an ad valorem tax levied generally on all property within the limits of the district.

This being so, the District Court erred in holding that complainant was not entitled to a hearing and that benefit to its property would be conclusively presumed. In any event, since the result of the tax amounts to a confiscation of complainant's earnings and property in the form of a tax for the construction of a completing highway system, we submit that the complainant is entitled to an injunction to restrain the collection of the tax as against its property within the district.

Respectfully submitted,

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FEB 18 1928
CHARLES ELMORE CROPLEY
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 263

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ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
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BRIEF OF DEFENDANT IN ERROR.

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February 20, 1928.

MONTGOMERY-ANDREE PRINTING CO. INC., 307 CHARTRES, N.O.

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BRIEF OF DEFENDANT IN ERROR.

May It Please Your Honors:

Plaintiff in error has assigned seventeen specific grounds of error. In their brief, counsel have com-

bined these seventeen assignments into six groups, two of which are based upon claims of violation of a State law, and the remaining four are based on alleged violations of the Federal Constitution, the Fourteenth Amendment; the general ground of attack being a claim of deprivation of property without due process of law.

In their brief counsel argue first the alleged violations of the State statutes, and then consider the questions arising under the Constitution of the United States. In presenting our reply to counsel's argument we prefer to argue first the grounds of attack which are based upon the Federal Constitution, and then consider the questions of local law. Therefore, we group counsel's contentions in the order following:

I.

THE VIOLATION OF THE FEDERAL CONSTITUTION.

A. That neither the State statutes provide for, nor was the complainant given notice of, or allowed a hearing prior to the creation of the District and the voting of the bond issue and taxes, with the result that it has been deprived of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

B. The highways to be constructed compete with the plaintiff in error in the operation of its railroad, with the result that it receives no benefit from the construction of the roads and, therefore, is deprived of its property without due process of law.

C. The complainant's property is valued upon the assessment rolls for assessment purposes at a larger percentage of its cash valuation than the property of local landowners, with the result that it pays a larger proportion of taxes based upon this assessment than the other property owners and it, therefore, is deprived of its property without due process of law.

D. That these taxes impose an undue burden on interstate commerce.

II.

THE VIOLATION OF STATE LAW.

A. That the Consolidated Road District of Bossier Parish was improperly and illegally created by the Police Jury of that Parish, contrary to the statutes of the State of Louisiana and particularly Act 118 of the Acts of 1921, in that the District embraces practically the whole of one parish, whereas it is claimed that the statute prohibits the creation of a Road District from the whole of any one parish.

B. That the taxes sought to be enjoined were illegally levied in the year 1926 to pay interest falling due on bonded indebtedness in the year 1927. This, it is claimed, does violence to the Constitution and Statutes of Louisiana and particularly Paragraph (a) of Section 14 of Article XIV of the Constitution of 1921.

We will argue each of the above questions in the order stated.

I.

VIOLATIONS OF THE FEDERAL CONSTITUTION.

A.

WANT OF A HEARING.

Counsel, in their brief, contend that the plaintiff in error was at no stage of the proceedings afforded either a notice or a hearing as to whether its railroad should have been included in the Consolidated Road District, or as to whether the bonds of that District, aggregating $1,630,000.00, should have been issued and the necessary taxes levied annually to pay same in principal and interest. The District Court held that complainant was entitled to no hearing on these questions; that even if it were, the statutes of Louisiana had provided for a hearing, of which it had failed to take advantage within the period of time provided by those statutes, with the result that the right to institute the proceedings had preempted or prescribed.

We submit that the ruling of the District Court in both respects was eminently correct and proper, and that the claim of a deprivation of property on the ground of want of hearing or notice is without merit. In answer to counsel's argument on this question we submit the following propositions:

First. The plaintiff in error was entitled to no hearing prior to the organization of this district and the imposition of the tax herein called in question, for the reasons that the Consolidated Road District of

the Parish of Bossier is a political subdivision of the State of Louisiana created by the Police Jury of the Parish of Bossier under express power conferred upon it by the Constitution and statutes of Louisiana; it is an agency used by the State for the construction of improved highways, a purpose public in its nature and not merely for the improvement of the property in the District; that the tax levied by the Police Jury was levied upon all property therein, based upon its assessed value and without reference to benefits conferred by or arising from the construction of the public roads; that consequently the tax is a general tax and not a local assessment; and that under these circumstances no notice or hearing was required nor could it be demanded as a prerequisite to due process of law under the Federal Constitution.

Second. In the alternative, if notice or hearing were required, the State statute does in fact provide for a hearing on all questions involved in that the statute provides for notice by and a hearing before the Police Jury prior to the creation of a District; which notice the Police Jury did, in fact, give and which hearing was, in fact, allowed; that subsequent to the creation of the District and the promulgation of the election held therein, the statutes and Constitution of Louisiana allow a period of sixty (60) days within which any party at interest may resort to the Courts to contest the legality or the constitutionality of the creation of the District and the imposition of the tax for any cause, after which time the right of action is barred. That these provisions of the Constitution and statutes of Louisiana afforded a reasonable notice and hearing and constitute due process of law.

FIRST.

Plaintiff in Error Was Entitled To No Hearing.

The District Court squarely decided that the plaintiff in error could not raise the question of benefits and was entitled to no hearing prior to the creation of this District and the levying of the tax by the Police Jury. It based its ruling upon a recent decision of the Court of Appeals of the Fifth Circuit, that rendered in the case of *Wight v. Police Jury of Avoyelles Parish, 264 Fed. Rep., 707*, wherein that Court construed the former Louisiana Constitution and statutes. The Court quoted as follows from the opinion of the Court of Appeals in the *Avoyelles Parish* case:

> "Article 292 of the Constitution of Louisiana (which corresponds with Sec. 14, Art. XIV of the Const. of 1921), as published after the convention of 1913, provides for the division of parishes into road districts, and defines the taxing and bond-issuing capacity of the districts. Such legislation as is necessary to make the constitutional provisions effective is provided by Act No. 183 of 1914 and preceding statutes. The Constitution provides that 'Police Juries of this state may form their respective parishes into road districts.' No provision is made by the Constitution or a statute for notice to taxpayers of contemplated action by the police jury in the formation of districts, and in none of the cases under consideration was notice given. Provisions are made for notice of bond and tax elections, and for publication of the result, and the

terms of the law have, in these respects, in each instance been observed.

"It is contended that the law as written and administered is unconstitutional because the law does not require notice (fol. 111) and no opportunity is in fact given the taxpayers to be heard on the questions of the necessity or advisability of the creation of a road district, nor as to boundaries, nor as to whether property to be included would be benefited, nor as to the rate and duration of the tax, or the amount of the bonds.

"Communication, transportation, and commerce are distinguishing elements of civilization. To their development highways are essential. The construction and maintenance of good roads has been accepted universally as a function of government. In the United States there was an early recognition of the right of the general government to construct, or aid in the construction of national highways; but the duty of providing roads was primarily in the states, and in the states the duty remains.

"After the success of the steam railroads was demonstrated, the attention of the federal and state governments was, for a number of years, especially directed towards their development. Aid was extended by the United States, by the states, by counties, parishes and municipalities. Though these highways have, ordinarily, been privately owned, the right of the state to levy taxes and

appropriate property to help in their construction, and to authorize like action by their governmental subdivisions, has almost uniformly been sustained.

"The extraordinary development of the country has brought about conditions under which the needs for transportation facilities can no longer be met by the railroads, and by the inferior dirt roads along which the pioneers have made their weary and wasteful way. Communities which have heretofore recognized the necessity of freeing themselves from the burdens of ignorance, and have provided public schools, have come to realize that getting out of the mud is another essential step to that end. They realize that good roads are the complement of the school house; that isolation is not only an ally of ignorance, but of poverty; that prosperity in farming, trading, or manufacturing waits on transportation and communication.

"A tardy recognition of these fundamental facts has brought about activity in the issue of bonds and the levy of taxes for road purposes. The national government is taxing all the people that great interstate highways may be constructed. States are taxing all their people that roads within the state may be built. In many states subdivisions (fol. 112) have been made, or recognized, and authority given to the taxpayers therein to supplement the efforts of the state and national governments. These subdivi-

sions for roads do not, ordinarily, take the form of improvement districts, in which specific property receiving peculiar benefits is assessed in proportion to the benefits, but are based upon the idea that the taxpayers are doing a proper part in the building up of systems of roads connecting all the sections of the country, and from which they, and everybody else, must derive a benefit.

"In the state of Louisiana, the parish is primarily used as the unit for road purposes; but, lest this division of the state should not bring the necessary local cooperation and supervision, provisions have been made for dividing the parishes into road districts, which, under the terms of the Constitution, became governmental subdivisions of the state. The legislation as to these governmental units recognizes that the needs of the public with reference to roads may be more imperative in some parts of the state than in others. It recognizes, also, that in some parishes or parts of parishes the people may be willing to tax themselves for good roads, while in others the conditions may be such that the taxes cannot be levied.

"The creation of road districts is vested by the Constitution in the police juries of the several parishes. It is a legislative authority doubtless well assigned. It may be assumed that the necessary action can better be performed by a body more familiar with local conditions and needs than by the state

legislature. No taxpayer, and no other person, would ordinarily have a right to interfere with or participate in the exercise of this power. It is conceivable that, even in defining the necessary governmental subdivisions, the people, acting in their primary power in the formation of their Constitution, or acting through their Legislature, or acting through a special legislative body, as in the present case, might lay off the lines in such an arbitrary, unjust way, with such a palpable purpose to destroy or confiscate property, that the protection of the Constitution would not be denied. But such a possible case is not immediately under consideration.

"Complainant makes the proposition that the grant of power to the police jury violates the Constitution of the United States, because no provision is made by which he, as a taxpayer, may be heard with reference to the advisability (fol. 113) of action under the authority, or in the manner in which the authority is to be exercised. There is no constitutional requirement of special notice to any particular individual of contemplated action of a general nature by a governmental body exercising general legislative or administrative functions. The taxpayer in a proposed road district has no more right to notice of a division of the state by the proper authority into road districts than to notice of the creation of a new parish or of the division of the parish into justice wards.

"The governmental functions are carried on in a public way. The forces which exist to compel conformity of public action to public opinion are open to everybody. Except in those cases in which action is contemplated directly affecting the right of an individual, as distinguished from action affecting the public generally, no person has more right to specific notice than all other persons. It is assumed that all people interested in public affairs will acquire a knowledge of what is taking place among those to whom the conduct of public affairs has been trusted. And so long as the officers are acting within their authority, redress for improper conduct is political, instead of judicial.

"There are certain classes of improvement districts, not supported by direct taxation, and with reference to which definite rules for determining benefits and assessments have not been prescribed by the law, where the rule may be different. Drainage, irrigation, sewerage, and street paving districts may be of this character. In districts of this kind, the improvement may be general and the expense met by general taxes, or the improvements may bring general public benefits and also direct benefits to particular property, and the expense be met by general taxes and specific assessments, or the direct benefits to particular property may be so great, as compared to the general benefits,

that equity is approximated by direct assessments in proportion to these direct benefits.

"In those cases in which improvement districts are formed for the direct benefit of the property within the district, and the method of meeting the expenses of the improvement is to determine the specific benefits and to fix upon each property owner an assessment in proportion, and where the law designates no method of determining the benefit and assessment other than by a reference to some commission or other tribunal, a matter of fact is presented directly involving the property rights of individuals, and each person affected must have an opportunity to produce for consideration the facts pertinent to his individual case. If this opportunity is not given, even the fact that the assessment was fair may not meet the objection that the property owner is deprived of a constitutional right.

"Doubtless the laws could provide for road districts, in which improvements would be made for the benefit of specific property and the improvement met by assessments against such property. The Constitution and statutes of Louisiana, however, make no provision for such improvement districts. The districts under consideration are not of this character. They are special taxing districts for the general good. They enable the construction of good roads from which every person in the state may be expected to receive

> some direct or indirect benefit. To undertake to apply to such government activities the rules which are invoked with regard to drainage, irrigation, or other improvement districts of that character would be to entirely destroy the possibility of efficient governmental action."

We have quoted at length from the above opinion of the Judges of the Court of Appeals of the Fifth Circuit, for the reason that the rule announced by them in that case is now the recognized rule to be followed in that Circuit, and if it be found to be correct, it effectively disposes of the principal issue of this case. That the rule of law announced by those Judges is correct, is clearly supported by authority and the history of public road legislation in Louisiana.

Before arguing the principles of law involved in the consideration of this question it might be well to call to the attention of your Honors, the history of the constitutional and statutory legislation had in Louisiana on this important question of the construction of hard-surfaced roads, and the incurring of debt and the imposition of taxes to defray the cost of their construction, as well as to refer briefly to the action taken by the Police Jury of Bossier Parish, pursuant to this constitutional and statutory authority.

The building and improvement of hard-surfaced roads in the State of Louisiana has for a number of years been recognized as a matter of prime importance. The Constitution of Louisiana for the year 1898 contained specific provisions dealing with the

construction of public roads (Articles 291 to 294). Article 292 specifically provided that "*the Police Juries of this State may form their respective parishes into Road Districts.*"

Article 281 of this same Constitution, 1898, as originally written, authorized municipal corporations, *parishes* and drainage districts, when authorized by a vote of property taxpayers, to incur indebtedness, issue bonds and levy and impose taxes for the purpose of defraying the cost of the construction of works of permanent public improvement, including public roads.

In 1910 this Article 281 was amended. Road Districts were granted power, along with municipal corporations and parishes, all being specifically referred to as "subdivisions of the State" to incur debt and issue bonds when authorized by vote of the property taxpayers, who were qualified electors, and the governing authorities were *required*, after these bonds had been issued and sold to levy and impose annually upon all property in the District, an *ad valorem* tax, in addition to all other taxes, sufficient to retire the bonds in principal and interest.

In 1913, the Constitution of 1898 was revised, and the Constitution of 1913 was adopted. Article 292 of that Constitution again expressly declared that "the Police Juries of the State may form their respective parishes into Road Districts." Article 281 of that Constitution again specifically granted to "Municipal corporations, parishes, school, drainage, subdrainage, *road, sub-road,* navigation or acreage *dis-*

tricts," again referred to as "subdivisions of the State," the power, when authorized by a vote of qualified taxpaying electors, to incur debt, and issue bonds, and *required* the Police Juries to levy and impose each year the taxes necessary to retire these bonds. The proceeds of the bonds to be used in the building and improvement of public roads.

These articles of the Constitution were held by the Supreme Court of Louisiana to be self-executing, and that no legislation was required to carry them into effect, in the case of *Coguenhem v. Avoca Drainage District, 130 La. Rep., 323*, where the Court was called upon to construe Article 281 of the Constitution of 1898, as amended by the Constitutional Amendment of 1910. The Court held that no enabling act was needed to carry the Article into effect:

> "At the time the tax in question in this case was levied, the said amendment had already been adopted and gone into operation, and it, of itself, *in the absence of any legislative act, would clearly be sufficient to authorize said tax.* It reads plainly to that effect. Moreover, it expressly provides that it is to go into effect imediately, which can have no other meaning than that an enabling act is not to be necessary for it to go into effect." (Italics ours).

The Legislature did, however, adopt general statutes carrying these provisions of the Constitution into effect. These statutes authorized the creation of Road Districts by the Police Jury, and provided the machinery for the holding of elections to permit governing

authorities of such Districts to incur debt and issue bonds and *required* the levy and imposition of taxes to pay them.

Act 183 of 1914 and Act 30 of the Extra Session of 1917 authorized the creation of Road Districts, and Act 256 of 1910, as well as earlier acts, provided the machinery for the holding of the elections. It is particularly interesting to note the provisions of Section 1 of Act 256 of 1910, wherein it was specifically declared that:

> "Parishes, wards, cities, towns, villages, school districts, *road districts*, drainage districts and sub-drainage districts are *declared to be political sub-divisions of the State*, and special taxes may be levied, debt incurred and bonds issued therefor." (Italics ours).

In 1913 the Police Jury of the Parish of Bossier, in pursuance of these constitutional and statutory mandates, created Road District No. 1 of that parish. Under authority of a vote of property taxpayers, a debt of $175,000.00 was incurred by the Police Jury, and taxes were imposed annually for their payment. (Record, page 49).

In 1915, the Police Jury of the Parish of Bossier likewise created Road Districts Nos. 2 and 3, and debts in the sum of $50,000.00 each were incurred on behalf of each of those Districts, and taxes were imposed for their payment. (Record, page 49).

These Districts comprise the western portion of the Parish of Bossier. The railroad belonging to the

plaintiff in error runs through the heart of what was Road District No. 3 and across the northern portion of Road District No. 1. (Map, Rec., p. 12). The taxes levied and imposed by those Districts were paid each year by the complainant up to and including the year 1925, when the Consolidated Road District of Bossier Parish was created.

In 1921, a new Constitution was adopted by the people of the State of Louisiana and it was specifically declared in that Constitution that "the Legislature may, by general law, authorize the Police Juries to create Road Districts and Sub-Road Districts composed of territory, either wholly within a parish or partly within two or more parishes * * * and may by general law and within the limitations and conditions herein contained, authorize Road Districts and Sub-Road Districts so created, through the Police Jury or Juries of the Parish or Parishes, as the governing authorities thereof, to incur debt and issue negotiable bonds for the purpose of" constructing public roads. (Paragraph [c], Section 14, Article XIV). This section and article went even further. Again it was written into the Constitution that when bonds were issued by Road Districts, the Police Jury, as the governing authority of the District, "shall impose and collect annually in excess of all other taxes, a tax sufficient to pay the interest annually, or semi-annually, and the principal falling due each year, or such amount as may be required for any sinking fund necessary to retire said bonds at maturity" (Paragraph [a], Section 14, Article XIV, Constitution of 1921).

At the Special Session of the Legislature called subsequent to the adoption of the Constitution of 1921,

the Legislature passed Act 118 of 1921, which authorized the formation and consolidation of Road and Sub-Road Districts, defined their powers and duties and authorized the issuance of bonds. This statute we will more fully discuss later. (Brief, p. 38 to 39). At this time, it is merely necessary to state that it authorized the creation of Road and Sub-Road Districts by the Police Juries of the State, as well as the consolidation of existing Road Districts; provided for notice and hearing as to their creation, and authorized these Road Districts, Sub-Road Districts or Consolidated Road Districts to call elections and submit to the property taxpayers, propositions to incur debt and issue negotiable bonds. When these bonds had been issued, it was declared to be the duty of the governing authorities to impose and collect annually a tax on all the property subject to taxation by the subdivision under the Constitution and laws of Louisiana for their payment.

At the same session of the Legislature there was adopted Act 46 of 1921, which provided the machinery for the holding of elections of qualified property taxpayers in these Road Districts. Section 1 of this statute referred to Road Districts "as sub-divisions of the State," and authorized them to incur debt and issue negotiable bonds when authorized by the vote of a majority of qualified taxpayers in number and amount.

In pursuance of the authority contained in this Constitution and these statutes, in September of 1925, the Police Jury of Bossier Parish gave notice by publication for a period of ten (10) days of its intention to

consolidate the then existing Road Districts Nos. 1, 2 and 3, along with other lands, into a Consolidated Road District, and called a special meeting for October 13, 1925, to consider the formation of the District, and to hear complaints. This notice was published for ten days in the official journal. On the date specified, the Police Jury did meet, and objections were urged to the boundaries of the District (it being claimed that more territory should be included in the District than originally specified. It was also claimed that the bond issue should be increased (Rec., pp. 50-51). As a result of these objections, the Police Jury adopted another ordinance, again declaring its intention to create a Consolidated Road District, defining its boundaries, in accordance with the wishes of the taxpayers, and announcing its intention to meet on November 10, 1925, for the purpose of hearing objections and creating the District. (Rec., p. 51). This notice was published for ten days, and on November 10, 1925, the Police Jury again met, and as no objections were urged to the creation of the District, an ordinance was adopted ordering the consolidation of the Road Districts and creating the Consolidated Road District here under attack. (Rec., p. 52).

Thereafter, the Police Jury, as the governing authority of the District, called an election of the property taxpayers in the manner provided by the Constitution and laws of Louisiana; notice of this election was published in the official journal of the parish for a period of at least thirty days, and at this election, the property taxpayers qualified to vote authorized the incurring of a debt in the sum of $1,630,000.00 and the imposition of the tax, the payment of which is

herein enjoined. (Rec., p. 53). The result of this election was duly promulgated by the Police Jury, the proceedings of its meeting and the promulgation of the election being published in the official journal of the parish for one issue, as required by law. (Rec., p. 53).

Thereafter, the Police Jury placed the liquidated bonds to cover the outstanding bond issues of Road Districts Nos. 1, 2 and 3 in the State Treasury. It then advertised for sealed bids for the remaining bonds, received sealed bids for the sale thereof, and on March 27, 1926, subsequent to sixty days from the date of the promulgation of the result of the election, finally confirmed the sale of the bonds to the bond purchasers. (Rec., p. 54). Delivery was made, the proceeds of their sale were placed in the Treasury of the District, and at the time this suit was instituted, the money was being expended upon the construction of a system of hard-surfaced roads in the District. This work was being done in co-operation with the State Highway Commission of the State, assisted by the Federal Government. (Rec., p. 55. Map, Ex. S, Rec., p. 57). The Police Jury also levied the annual tax for the year 1926, of seven mills to meet the payments of principal and interest next due upon the bonds.

From this statement it will be seen that under the Constitution and statutes of Louisiana, a Road District is a "sub-division" of the State. In this respect, it is classed in the constitutional provisions referred to, along with municipalities and parishes. It is created under constitutional authority. Its bonds are its direct, unconditional obligations, which are to be paid from the annual levy of unlimited *ad valorem*

taxes, levied and imposed upon all of the property, real and personal, in the District, under direct constitutional mandate (the police jury being *required*, not merely authorized, to impose the tax) based upon the assesed valuation fixed for the levy of State taxes, and without any reference to benefits conferred by or arising from the construction of the roads. In other words, this is a general tax, not a local contribution or assessment.

That the Constitutions and statutes of Louisiana contemplate that an *ad valorem* tax of this character is a general tax and not a local assessment, is conclusively established when you consider the decisions of the Supreme Court of Louisiana construing provisions of a similar nature contained in the former Constitutions and statutes of that State.

As early as 1891, our Court was called upon, in the case of *Munson v. Board of Commisisoners of Atchafalaya Basin Levee District, 43 La. An., 15, 29,* to pass upon this question in construing that article (214) of the Louisiana Constitution of 1879, which authorized the Legislature to create Levee Districts and empowered the Commissioners to impose *ad valorem* taxes not to exceed ten mills on the dollar "on the property" in the Districts. It was claimed that this tax was in the nature of a special assessment levied "on the basis of benefits," and not a general tax levied on all property "for governmental and administrative purposes." The Court held that it was a general tax, saying:

> "While it is true that the tax specified in the article and amendment is only to be

laid 'on property situated within the alluvial portion of the district subject to overflow,' and is to be levied for the specific purpose of 'constructing, preserving and repairing the levees protecting the land of a district,' it is but a *'tax' for the local purposes of that district* of country, and is imposed on the persons therein domiciled, and the property therein situated, and upon all the subjects on which the State imposes a tax for State purposes. It is not a 'local assessment' for the construction of a particular work, and intended to be levied upon particularized property to be benefited thereby. *It is in the nature of a burden, and does not proceed upon the theory of benefit to the property to be assessed.*" (Italics ours).

Again, in the case of *Louisiana & N. W. R. Co. v. State Board of Appraisers, 126 La. Rep., pages 471, 472*, the Court had under consideration the validity of an *ad valorem* tax levied for school purposes under Article 232 of the Constitution of 1913. This article authorized parishes, municipal corporations, wards or school districts to levy special *ad valorem* taxes when authorized by vote of the property taxpayers, the avails to be used for the purpose of constructing public buildings, public school houses, bridges, wharves, levees, sewerage and other works of permanent public improvement. This tax was of a character similar to the one authorized by Article 281 of the same Constitution and Section 14 of Article XIV of the present Constitution. It was contended that such a tax levied by a school district was a special assessment or local bene-

fit tax. The Supreme Court of the State held the contrary, saying:

> "The tax is shown to be an *ordinary tax* by the very fact itself of express authority having been given for its levy. The Constitution has left the power of taxation unlimited and untrammeled in that phase of it by which special assessments are levied. This is established by an abundant and firmly settled jurisprudence. Had this tax, therefore, been a special assessment, no express authority for its levy would have been needed, and none would have been given. The framers of the Constitution would not have done the foolish thing of giving express authority to the Legislature to do a thing which the Legislature would have had the perfect right to do without such authority.
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> "Plainly the proviso which authorizes this tax simply extends in favor of schools the limit imposed by the article upon *ordinary taxation, and has reference to the same kind of taxation and the tax it authorizes is an ordinary tax.*"

In a later case, that of *Louisiana Ry. & Nav. Co. v. Madere, Sheriff, 124 La. Rep., 635, 638, 639, 640,* the Court affirmed the above decisions in another Levee Board case. In the Madere opinion, it was said:

> "Article 214 of the Constitution of 1879 authorized levee commissions to levy a tax

not to exceed 5 mills on the taxable property situated within the alluvial portions of levee districts subject to overflow. By amendment adopted in 1888 (Laws 1888, p. 8, No. 8), the limit was raised to 10 mills, and it was further provided that the rate of taxation might be increased by a vote of the property taxpayers of the district paying taxes for himself or others.

"By Act No. 95, p. 99, of 1890, creating the Pontchartrain Levee District, its board of commissioners was empowered to levy annually all district levee taxes authorized by article 214 of 1879 as amended, and it was made the duty of the assessor to extend said tax on the tax rolls, and the duty of the tax collector to collect said tax in the same manner that state taxes are collected, and to settle therefor with the auditor and State Treasurer.

"The same act authorized the board of commissioners to levy a 'special assessment or forced contribution' on certain lands, sugar, molasses, rice, cotton, and on railroads at the rate of $100 per mile of main line within the district.

"In this act the lawmaker makes a clear distinction between *district levee taxes*, to be levied and collected on property generally in the same manner as state taxes, and special assessments or forced contributions to be levied on particular property considered

to be specially benefited by the maintenance of the levee system.

"This distinction has been recognized and enforced by the Supreme Court of the state in a number of cases.

* * * * *

"This decision placed *levee taxes squarely on the plane of other general taxes authorized by the Constitution of 1879.* The same court had already, in Charnock v. Levee Company, 38 La. An. 325, drawn the distinction between the levee tax and the levee special assessment, and had held that the former was 'ordinary local taxation, levied in particular districts, it is true, but levied on all taxable property within such districts without reference to special benefit to particular property,' and that the provisions of the Constitution of 1879 had no application to 'that kind of taxation that falls under the denomination of strict local assessments, which are not levied on taxable property generally for the common public interest, but upon particular property specially benefited as an equivalent for the benefit conferred.'

"In the well-considered cases of Munson and Others v. Board of Commissioners, 43 La. An., 15, 8 South, 906, all the authorities were reviewed, and the court held that the *ad valorem* levee tax was a 'tax' for the local purposes of the district, and was not a 'local assessment' intended to be levied upon 'particularized property to be benefited thereby.'

> "The same distinction between a tax for local purposes and a local assessment was announced in Construction Co. v. Tax Collector, 108 La., 435, 32 South, 399, 58 L. R. A. 349, and in Louisiana & Northwestern Railroad v. State Board of Appraisers, 120 La. 471, 45 South, 394.
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> "The *settled jurisprudence* of this state on this subject renders it unnecessary for the court to consider the numerous authorities from other jurisdictions cited in the very able brief filed by counsel for the defendant."

The general nature of these taxes and their character are further borne out by the mode and method of their assessment and collection. In these respects they are on a parity with State and parish taxes.

In order to insure the assessment and collection of these general taxes levied by the Police Juries on behalf of the Road Districts, the Legislature has expressly provided that such taxes "shall be levied and collected, by the same officers, at the same time and in the same manner as the general taxes of the subdivision" (Sec. 35, Act 46 of 1921), and, as a further assurance, the Constitution authorized the Legislature to vest the taxing officers of the State and parish with the power to impose and collect such taxes in default of their imposition by the Police Jury (Paragraph j, Sec. 14, Art. XIV, Const. 1921), which power the Legislature conferred on these officers under the provisions of Act 46 of 1921, Section 35.

The mode and method of assessing and collecting all of the *ad valorem* taxes levied and assessed in Louisiana is as follows:

The Assessor of the Parish makes up his assessment rolls each year, listing thereon all property subject to taxation and fixing the valuation thereof for the purposes of such taxation. The tax levied by the Police Jury as the governing authority of a Road District is then extended upon these rolls, in the same manner as are the taxes of State and parish, and for school and other general purposes. All are based upon the assessed valuation appearing upon the assessment rolls. (Rec., p. 64). This roll is then delivered to the Sheriff of the parish and the Sheriff collects all of the taxes, the taxpayer being required to pay all taxes levied and imposed upon his property at the same time, whether such taxes are State, parish, road, school, or other general taxes. (Rec., p. 66).

Thus it will be seen that under the Constitution and laws of the State of Louisiana prevailing since 1898, not only has the building of roads in the State been recognized as a matter of prime public importance, in the same category as the construction of schools, but Road Districts have been created by Police Juries under this direct constitutional authority or constitutional mandate and these Road Districts have been placed in the same category with parishes and municipalities and have been declared "sub-divisions" of the State.

The public roads in these districts have been constructed by the Police Juries of the parishes in which the district are located, the cost of construction being

defrayed from the proceeds of bond issues, issued and sold under authority of a vote of qualified taxpaying electors, and not from the imposition of special assessments against specially benefited land. The Police Juries are then required to levy ordinary *ad valorem* taxes on all property in the District, based on assessed value, and regardless of benefits, the avails of which are used to pay the principal and interest of the bonds thus issued and sold. The burden of these taxes being spread equally over all of the property in the District.

Then from a consideration of the Constitution and statutes of Louisiana it will be seen that full legislative power and authority is conferred upon Police Juries by the Constitution and those statutes in the matter of the creation of Road Districts and the imposition of taxes by such Districts; that such taxes are a burden imposed equally upon all property in the District, and are general in their nature and in no sense special. Then, under these circumstances, we submit that the determination of all questions by the Police Jury of Bossier Parish were conclusive and final and that no taxpayer was entitled to notice or hearing prior to action by that body. That the above proposition is correct is established by numerous decisions of this Court.

That where the Legislature has established the bounds of a district for the purpose of determining what property shall be subject to taxation, to defray the cost of public improvement, this legislative determination is binding, and that due process of law does not require that the taxpayer shall be afforded a hearing, has been many times squarely decided by this Court, one of the latest cases being that of *Valley*

Farms Co. v. Westchester County, 261 U. S., 155-164; 67 L. Ed., 585-590. In that case, in passing upon the validity of the creation of a sewer district by the Legislature of the State of New York, it was said:

> "It was unnecessary for the Legislature to give notice and grant hearings to owners before fixing the boundaries of the district so as to include their lands, and prescribing the method of taxation."

Another late expression of this Court on the question is found in the case of *Hancock v. Muskogee, 250 U. S., 454, 457; 63 L. Ed., 1081-1083.* There it was claimed that the levy of an assessment, under an Oklahoma statute, to cover cost of construction of a sewer, violated the Fourteenth Amendment, as no hearing was provided. This Court said:

> "So far, therefore, as the present ordinance determined that a district sewer should be constructed, and established the bounds of the district for the purpose of determining what property should be subjected to the special cost of constructing it, there was an authorized exercise of the legislative power of the state, which, according to repeated decisions of this court, was not wanting in due process of law because of the mere fact that there was no previous notice to the property owners or opportunity to be heard. The question of distributing or apportioning the burden of the cost among the particular property owners is another matter. Spencer v. Merchant, 125 U. S., 345, 355-357, 31 L.

Ed., 763, 767, 768, 8 Sup. Ct. Rep., 921; Paulsen v. Portland, 149 U. S., 30, 40, 37 L. Ed., 637, 641, 13 Sup. Ct. Rep., 750; French v. Barber Asphalt Paving Co., 181 U. S., 324, 343, 45 L. Ed., 879, 889, 21 Sup. Ct. Rep., 625; Shumate v. Heman, 181 U. S., 402, 45 L. Ed., 922, 21 Sup. Ct. Rep., 642, affirming Heman v. Allen, 156 Mo., 534, 57 S. W., 559; Phillip Wagner v. Leser, 239 U. S., 207, 218, 60 L. Ed., 230, 236, 36 Sup. Ct. Rep., 66; Withnell v. Ruecking Constr. Co., 249 U. S., 63, *ante*, 479, 39 Sup. Ct. Rep., 200."

It may, however, be contended that the action in this case at bar was not taken by the Legislature, but by the Police Jury acting as the governing authority of a Road District and that, therefore, as this Board determined the question, a hearing should have been afforded.

It is equally well settled by decisions of this Court that where the Constitution or the Legislature has delegated full power to a municipal board to determine questions of this character, the decision of that Board has the effect of a legislative determination.

In the case of *Withnell v. Ruecking Constr. Co., 249 U. S., 63, 69, 63 L. Ed., 479, 482*, this Court was called upon to consider the action of the Municipal Council of the City of St. Louis, assessing the cost of paving upon the abutting property. The Charter of the City of St. Louis was framed under express authority of the people, conferred upon them under the Constitution. It was claimed that the complainant had

not been afforded an opporunity to be heard, in that the Charter provided for no notice or hearing. The Court, in answering the contention, said:

> "But whether a property owner is entitled to be heard in advance upon the questions of benefit and apportionment depends upon the authority under which the assessment is made. When the assessment is made in accordance with a fixed rule adopted by a legislative act, a property owner is not entitled to be heard in advance on the question of the amount and extent of the assessment and the benefits conferred. French v. Barber Asphalt Paving Co., 181 U. S., 324, 45 L. Ed., 879, 21 Sup. Ct. Rep., 625; Embree v. Kansas City & L. B. Road Dist., 240 U. S., 242, 60 L. Ed., 624, 36 Sup. Ct., 317; Phillip Wagner v. Leser, 239 U. S., 207, 217, 218, 60 L. Ed., 230, 236, 237, 36 Sup. Ct. Rep., 66, and cases cited. We are of opinion that the assessment made in accordance with the rule of the St. Louis charter was legislative in character and required no previous notice or preliminary hearing as to the nature and extent of benefits in order to maintain its constitutional validity. The charter of the City of St. Louis was adopted by a vote of the people under state constitutional authority."
>
> * * * * *
>
> "We reach the conclusion that the attack upon the validity of the assessment for want of advance notice of hearing as to benefits must fail."

This case was affirmed in *Hancock v. Muskogee, supra,* where similar contention was made, and it was answered by the Court in the following language:

> "The chief reliance of plaintiff in error is upon those decisions which have held that where the legislature, instead of determining for itself what lands shall be included in a district, or what lands will be benefited by the construction of a sewer, submits the question to some board or other inferior tribunal with administrative or quasi-judicial authority, the inquiry becomes in its nature judicial in such a sense that property owners are entitled to a hearing or an opportunity to be heard before their lands are included. Fallbrook Irrig. Dist. v. Bradley, 164 U. S., 112, 166, 167, 174, 175, 41 L. Ed., 369, 391, 392, 394, 17 Sup. Ct. Rep., 56; Parsons v. District of Columbia, 170 U. S., 45, 52, 42 L. Ed., 943, 946, 18 Sup. Ct. Rep., 521; Embree v. Kansas City & L. B. Road Dist., 240 U. S., 242, 247, 60 L. Ed., 624, 627, 36 Sup. Ct. Rep., 317. But they have no application to a case where, as in the case before us, full *legislative power over the subject-matter has been conferred by the state upon a municipal corporation.* Where that has been done, a legislative determination by the local legislative body is of the same effect as though made by the general legislature. Withnell v. Ruecking Constr. Co., 249 U. S., 63, 70, *ante,* 479, 483, 39 Sup. Ct. Rep., 200." (Italics ours).

We have shown from the history of the constitutional and statutory legislation had in Louisiana on this particular subject that both in the Constitution and by legislative act, Police Juries are vested with power in connection with the creation of road districts and they are likewise granted full power to incur debt and issue bonds under certain specific conditions outlined in the Constitution and in these Statutes.

Then we submit that under the authorities above cited the Police Juries have been fully vested under the Constitution and Statutes with full power in the matter of the creation of Road Districts and that their determination of the question has the effect of a legislative determination; that no hearing is required prior to the creation of the District, and that the ruling of the Court of Appeals of the Fifth Circuit, in the *Wight* case was eminently correct, and that when that Court said:

> "Doubtless the laws could provide for road districts, in which improvements would be made for the benefit of specific property and the improvement met by assessments against such property. *The Constitution and statutes of Louisiana, however, make no provision for such improvement districts.* The Districts under consideration are not of this character. They are special taxing districts for the general good. They enable the construction of good roads from which every person in the state may be expected to receive some direct or indirect benefit. To undertake to apply to such government activities the rules which are invoked with regard to drain-

> age, irrigation, or other improvement districts of that character would be to entirely destroy the possibility of efficient governmental action," (Rec., p. 86)

it properly construed the Constitution and Statutes of Louisiana and properly announced the rule which has been established and recognized by repeated decisions of this Court. That the ruling of the Judges of the Court of Appeals is correct, and that the principle of that case is sound, we further respectfully submit, has been recognized by this Court, for, in the *Archer County* case, *Browning v. Hooper, 269 U. S., 396, page 70, L. Ed., page 330*, this Honorable Court broadly stated the rule announced in the *Wight* case, and cited that case approvingly to sustain the proposition:

> "Where a local improvement territory is selected, and the burden is spread by the legislature or by a municipality to which the State has granted full legislative powers over the subject, the owners of property in the district have no constitutional right to be heard on the question of benefits. Valley Farms Co. v. Westchester, *supra;* Hancock v. Muskogee, 250 U. S. 454, 459, 63 L. Ed. 1081, 1084, 39 Sup. Ct. Rep. 528; Withnell v. Ruecking Constr. Co., 249 U. S. 63, 69; 63 L. Ed. 479, 483, 39 Sup. Ct. Rep. 200; *Wight v. Avoyelles* (C. C. A. 5th) 264 Fed. 705."

Thus it will be seen that your Honors cite as authority for the rule of law announced, in addition to the cases decided by this Court, the decision of the Court of Appeals for the Fifth Circuit, upon which we rely.

This is the only decision of any Court of Appeals cited in support of this proposition of law.

We respectfully submit that the ruling in the *Wight* case is in strict accord with the decisions of this Court; that the ruling in that case has been approved by this Court; and that therefore, when the District Court applied the rule announced in the *Wight* case and held that the plaintiff was entitled to no hearing before the Police Jury of the Parish of Bossier, it properly applied the law and, to quote the words of this Court used in the case of *Campbell v. Olney, 262 U. S., 352-354*, "his claim that he was denied due process of law is not even colorable."

Counsel, however, contends that the decision of this Court in the *Archer County* case controls the case at bar, and that in that opinion, a contrary rule of law was announced to that laid down by the Court of Appeals for the Fifth Circuit in the *Wight* case. This contention was given very careful consideration by the Judges of the District Court, and those Judges so clearly pointed out the distinguishing features between the two cases that we deem it necessary to do no more than quote this portion of the opinion of the District Court:

> "It is urged by complainant that the recent decision of the Supreme Court of the United States in the Archer County case, ... v. ....., ...U. S.....,, is contrary to this ruling of the Court of Appeals. However, the two cases are easily distinguishable. In the Archer County case the power to initiate proceedings

for the levying of the road tax therein involved, was vested in a few taxpayers, who, in their petition were given the right to define the district, fix the amount, maturity of the tax, etc., and when submitted to the County Commissioners the latter had no option but to order an election. If carried by vote of the property taxpayers entitled to vote, then the bonds were issued and the tax levied accordingly. The Court simply held that this was in effect the abdication of its authority by the Legislature and the vesting of unlimited power in the petitioning taxpayers without opportunity to nonconsenting and nonvoting taxpayers to be heard. The proceeding was in no wise similar to the one here. It is settled, in fact conceded, that the Legislature itself might impose the tax without hearing on the part of anyone, and we think it equally true that it may vest that power in one of its municipal subdivisions like the police jury or governing body of a parish. Under the Constitution and laws of Louisiana the police jury is made the governing authority for road districts and the duties of defining the district, fixing the amount and duration, interest, etc., of the bond issue as well as the levying of a tax to pay the same, is intrusted to it. The fact that it must have the approval of the property taxpayers does not, in our opinion, affect its governmental status as a subdivision of the state. In the present case we think the police jury complied with all of the requirements of the Constitu-

tion and laws of the State, and in view of the nature of the proceeding it is not subject to the objection urged in the Archer County case." (R., p. 87).

SECOND.

The State Statute Provides For, and the Police Jury in Fact Allowed a Hearing Prior to the Final Imposition of the Tax.

Should your Honors conclude that notice and a hearing was required at some stage of the proceedings leading up to the formation of this District, the incurring of the debt and the levying of the tax, then we respectfully submit that the Constitution and Statutes of the State of Louisiana have provided for notice and hearing, and that in fact an opportunity to be heard was afforded the plaintiff in error, of which it failed to take advantage, and it is therefore now precluded from seeking to question the constitutionality or legality of the creation of the District, the issuance of the bonds or the levy and imposition of the tax.

Before arguing this proposition we crave your Honors' indulgence and permission to again refer somewhat to the Constitution and Statutes of the State of Louisiana. We have heretofore pointed out that under the Constitution of Louisiana the Legislature may, by general statute, confer upon the Police Juries of the parishes, the power to create road districts, and that those Police Juries as the governing authorities of the districts may incur debt and issue bonds, when properly authorized, for the purpose of constructing highways.

We also have heretofore called your Honors' attention to Act 118 of 1921, wherein the Legislature specifically authorized Police Juries to create Road Districts and Sub-road Districts, and provided the method of creation. As this statute is very important in the consideration of the issues herein presented, we will refer to it somewhat in detail.

Section 2 of this statute authorizes the Police Jury to create Road Districts on their own initiative after notice of intention to create the district has been ordered by resolution and the notice containing the proposed boundaries has been published once a week for four successive weeks.

Section 3 provides that a day shall be fixed on which the Police Jury shall hear objections and pass upon same, make changes in the boundaries and finally create the district, in which event notice of formation of the District shall be published in a newspaper in the parish.

Section 10 provides that where Road Districts theretofore had been created in the parish, that the Police Jury may consolidate all of such road districts and include in consolidated district other portions of the parish. These districts are known as Consolidated Road Districts.

These Consolidated Road Districts are created under the provisions of Section 11 of the statute, which provides that the Police Jury shall pass an ordinance specifying the existing road districts, the respective indebtedness of each, shall state that it was advisable to consolidate them, and make an estimate of the

amount of new money needed to enlarge the road system. This ordinance "shall be published once in the official journal of the parish." The Police Jury shall then, in not less than ten (10) days after publication of the ordinance, call an election, which shall "be called, proclaimed, held and promulgated in all particulars as near as may be in the manner prescribed by the general laws in relation to incurring debt and issuing bonds," at which election the qualified taxpaying electors shall vote on the question of the incurring of the debt. If a majority in number and amount of the qualified property taxpayers vote in favor thereof, the Police Jury shall promulgate and publish the result of the election and shall adopt two ordinances, to be published in the official journal, the first declaring the consolidated road district to have been created and the second providing for the issuance of consolidated road district bonds.

This statute we claim provides for notice by and a hearing before the Police Jury prior to the creation of the District. Plaintiff in error contends that it affords no hearing in so far as concerns the Consolidated Road Districts, but only in case of the creation of a Road District in the first instance. Taking the statute as a whole, it clearly contemplates notice and a hearing in both instances, but if there were any doubt as to its meaning, that doubt must be resolved in favor of the interpretation contended for by defendant, when you consider the manner in which the Supreme Court of Louisiana has interpreted this statute in the case of *Hardin v. Police Jury of the Parish of Vernon, 155 La. Rep., 899.* In that case the Louisiana Supreme Court had before it an action wherein a taxpayer was

seeking to attack the proceedings of the Police Jury of Vernon Parish creating a Consolidated Road District, the issuance of bonds and the levying of a tax. The Court discussed fully the statute of 1921 (Act 118), and said:

> "It will be noticed that in the creation and formation of road districts, *consolidated or otherwise*, the final authority is vested in the police jury, *subject to the requirement of notice and hearing of those in interest who may wish to complain. This, no doubt, was intended to afford, to any one who might desire, a chance by any legitimate means, to induce the jury to change or modify its purpose to such extent as might be determined—in other words, for the bringing into play of such arguments and the force of public opinion as might be available, as a wholesome influence upon the otherwise unlimited discretion of the police jury.* But, can it be said, in the light of the concluding declaration of the statute, that it should be liberally construed to promote such undertaking, that it was intended to make those requirements conditions precedent to the existence of a district and that a failure to do so should nullify the whole proceeding even after the matter has been submitted to and approved by a majority of the property taxpayers, and notwithstanding the period of repose, provided by the Constitution and Act 46 of the same year, has run? We think not." (Italics ours).

Thus it will be noted that our Court has expressly provided that the exercise of the authority vested in the Police Jury is "subject to the requirement of notice and hearing of those in interest who may wish to complain," then clearly the Court considered that notice and hearing are contemplated by the statute. Now it is a rule that the construction given a State statute by the State Court becomes a part of the statute as fully as though it were written therein:

> "The Supreme Court of the State, having said that the two statutes must be taken together in determining the penalty intended, we must accept that conclusion as if written in the statutes themselves * * * all that would be open in this Court, under the due process clause, is whether the State had power to impose the penalty fixed by the statutes as thus construed."
>
> *Hebert v. State of Louisiana, 272 U. S., 312, 71 L. Ed., 270.*

Then, under this statute, we submit that a hearing was afforded the plaintiff in error. The fact that it failed to avail itself of the opportunity and to appear before the Board was due to its own negligence. In any event it was afforded due process of law.

Counsel for plaintiff in error, however, attack the ruling of the Supreme Court of Louisiana in the *Hardin* case. Counsel claim in their brief (page 44) that the language of the Supreme Court was mere *dicta* and that the Court was not called upon to decide that question. This contention is fully answered by calling your Honors' attention to the statement of the issues

presented in that case as made by Judge Dawkins, then Judge of the Supreme Court of Louisiana. He pointed out that the attack was leveled at the creation of the district, as well as to the legality of the bonds and the tax. He specifically stated that it was alleged that "in creating the district, the Police Jury did not

1st. Give notice of intention to create;

2nd. Publish the ordinance creating the district for 10 days;

3rd. Wait 10 days after publication before calling the election."

Thus it will be seen that these very questions were presented.

Furthermore, in the case at bar, the facts are that the Police Jury published notice not once, but twice, and held two hearings prior to the organization of this Consolidated Road District. (R., pp. 50-52). Thus it too construed the statute in the same manner as did the Supreme Court of the State.

Notwithstanding this construction and the fact of notice and hearing, the counsel claim plaintiff in error was entitled to a direct and unequivocal statutory declaration of notice and hearing, and that anything else is a matter of grace and not due process of law. Is not this contention answered by the decision of this Court in the *Kentucky Tax Cases, Cincinnati, N. O. & T. P. R. R. Co. v. Kentucky, 115 U. S., 321, 324, 29 L. Ed., 414, 418?* In that case this Court was called upon to construe a Kentucky statute governing

the assessment of railroad property. In construing this statute the Kentucky Court of Appeals had said:

> "As we construe this Act, although in the nature of an original assessment, the parties had the right to be heard and were in fact heard before the board passing upon the question of valuation."

In its opinion this Court stated:

> "It is said, however, in answer to this, by counsel for plaintiffs in error, in argument, that whatever was in fact this alleged hearing, it could only have been accorded as a matter of grace and favor, because it was not demandable, as of right, under the law; and consequently has no such legal value as attaches to a hearing to which the law gives a right, and to which it compels the attention of the officer, under an imperative obligation, with the sense of official responsibility for impartial and right decision which is imputed to the discharge of official duty.
>
> "But such is not the *construction put upon the statute, as we have seen, by the Court of Appeals of the State, nor the practical construction*, as we infer from the averments of the pleadings, put upon it by the officers called to act under it. And if the plaintiffs in error have the constitutional right to such hearing, for which they contend, the statute is properly to be construed so as to recognize and respect it, and not to deny it. The Constitution and the statute will be construed

> together as one law. This was the principle of construction applied by this court, following the decisions of the state court, in Neal v. Delaware, 103 U. S. 370 (Bk. 26, L. Ed. 567), where words, denying the right, were regarded as stricken out of the State Constitution and statutes, by the controlling language of the Constitution of the United States; and in the case of Cooper v. The Wandsworth Board of Works, 14 C. B. N. S. 180, 194, in a case where a hearing was deemed essential, it was said by Willes, J., 'that, although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature.'" (Italics ours).

Even if it be conceded *arguendo* that the statute provided for no notice and hearing before the Police Jury prior to the creation of the Consolidated District, and that plaintiff in error was in fact deprived of both notice of the contemplated action of the Police Jury and of a hearing before that body, still we submit that under other provisions of the Constitution and statutes of the State of Louisiana, the plaintiff in error was allowed a reasonable time within which *to resort to the Courts* to urge objection to the creation of the Consolidated District and the imposition of the tax. This, in itself, constituted due process of law.

In this connection it should be remembered that the claim of plaintiff in error is that the action of the Police Jury of Bossier Parish deprives it of its property without due process of law. Then the sole ques-

tion for consideration is, has plaintiff in error enjoyed due process of law? If it has, then the demand as to this branch of the case must be dismissed. Counsel for plaintiff in error seem to assume that due process of law means that the hearing must have been allowed prior to the creation of the District, but we submit that such is not the rule of law. The rule, as announced by this Court, is that due process of law in matters of the character under consideration in this case means that the party complaining shall have had an opportunity *at some stage of the proceedings, prior to the time that the tax, which is sought to be imposed, becomes final, to be heard as to the legality of that tax.*

This was squarely decided in *Davidson v. New Orleans, 96 U. S., 97, 104, 24 L. Ed., 616, 619.* In that case the validity of a local assessment made by the City Council of New Orleans, was attacked on the ground that it deprived plaintiff of his property without due process of law. The Court laid down the following broad proposition of law as applicable to the case:

> "That whenever by the laws of a State, or by state authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be of the whole State or of some more limited portion of the community, and those laws provide *for a mode* of confirming *or contesting* the charge thus imposed, *in the ordinary courts of justice*, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to

deprive the owner of his property without due process of law, however obnoxious it may be to other objections." (Italics ours).

Again in *Londener v. Denver, 210 U. S., 373, 385, 52 Law Ed., 1103, 1112,* this general rule was once more affirmed:

"In the assessment, apportionment, and collection of taxes upon property within their jurisdiction, the Constitution of the United States imposes few restrictions upon the states. In the enforcement of such restrictions as the constitution does impose, this court has regarded substance, and not form. But where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that, at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, by publication or by a law fixing the time and place of the hearing. Hagar v. Reclamation Dist. No. 108, 111 U. S. 701, 28 L. Ed. 569, 4 Sup. Ct. Rep. 663; Kentucky R. Tax Cases, 115 U. S. 321, 29 L. Ed. 414, 6 Sup. Ct. Rep. 57; Winona & St. P. Land Co. v. Minnesota, 159 U. S. 526, 537, 40 L. Ed. 247, 251, 16 Sup. Ct. Rep. 83; Lent v. Tillson, 140 U. S. 316, 35 L. Ed. 419, 11 Sup. Ct. Rep. 825; Glidden v. Harrington, 189 U. S. 255,

47 L. Ed. 798, 23 Sup. Ct. Rep. 574; Hibben v. Smith, 191 U. S. 310, 48 L. Ed. 195, 24 Sup. Ct. Rep. 88; Security Trust & S. V. Co. v. Lexington, 203 U. S. 323, 51 L. Ed. 204, 27 Sup. Ct. Rep. 87; Central R. Co. v. Wright, 207 U. S. 127, *ante*, 134, 28 Sup. Ct. Rep. 47."

Counsel for plaintiff in error seem to assume the position that the Constitution of the United States requires a hearing before the Police Jury, and that a hearing before a Court is not sufficient. In this counsel clearly are in error, for it has been repeatedly decided by this Court that an opportunity to be heard in the Courts is sufficient and constitutes due process of law.

One of the leading cases on this question is that of *Hagar v. Reclamation Dist. No. 108, 111 U. S., 701, 708, 28 L. Ed., 569, 572.* In this case an act of the Legislature of California was called in question which provided for the reclaiming of swamp and overflowed marsh lands. The legality of an assessment levied under this statute was attacked on the ground that the complainant had not been afforded a hearing. The Court said:

> "The appellant contends that this fundamental principle was violated in the assessment of his property, inasmuch as it was made without notice to him or without his being afforded any opportunity to be heard respecting it, the law authorizing it containing no provision for such notice or hearing. His contention is that notice and opportunity to be heard are essential to render any proceedings due process of law which may lead

to the deprivation of life, liberty or property. Undoubtedly, where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, which imply that the party to be affected shall have notice and an opportunity to be heard; so, also, where title or possession of property is involved. But where the taking of property is in the enforcement of a tax, the proceeding is necessarily *less formal*, and whether notice to him is at all necessary may depend upon the character of the tax and the manner in which the amount is determinable. The necessity of revenue for the support of the government does not admit of the delay attendant upon proceedings in a court of justice, and they are not required for the enforcement of taxes or assessments.

* * * * * *

"In some states, *instead of a board of revision or equalization*, the assessment *may be revised by proceedings in the Courts and be there corrected if erroneous*, or set aside if invalid; or objections to the validity or amount of the assessment may be taken when the attempt is made to enforce it. *In such cases all the opportunity is given to the taxpayer to be heard respecting the assessment, which can be deemed essential to render the proceedings due process of law.* In Davidson v. New Orleans this Court decided this precise point. In that case, an assessment levied on certain real property in New Orleans for draining the swamps of that city

was resisted, on the ground that the proceeding deprived the owners of their property without due process of law; but the Court refused to interfere, for the reason that the owners of the property had notice of the assessment and an opportunity to contest it in the Courts. After stating that much misapprehension prevailed as to the meaning of the terms 'due process of law', and that it would be difficult to give a definition that would be at once perspicuous and satisfactory, the court, speaking by Mr. Justice Miller, said that it would lay down the following proposition as applicable to the case, 'That whenever by the laws of a State, or by state authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections.'

"This decision covers the cases at bar. The assessment under consideration could, by the law of California, be enforced only by legal proceedings, and in them *any defense*

*going either to its validity or amount could be pleaded * * *."* (Italics ours).

In *Lent v. Tillson, 140 U. S., 316, 328, 35 L. Ed., 419, 425,* this question was also squarely passed upon. In that case the Court again construed a California statute which authorized the opening of a street and which expressly provided that notice of the assessment be published for not less than ten days in two daily newspapers, and that within thirty days after the last publication, the party aggrieved would have the right to protest the validity of the assessment by petition to the county court. In construing this statute the Court said:

> "And ample opportunity was given to all persons interested to *test in a court* of competent jurisdiction the fairness and legality of any assessment proposed to be made upon their property for the purposes indicated by the Statute. That court had power to require such alterations or modifications of the report of the board of commissioners as justice demanded. It was not bound to approve any report that did not conform to its judgment as to what was right; and without such confirmation the board could not proceed in the execution of the work contemplated by the Legislature."

Again, in the case of *Cincinnati, N. O. & T. P. R. R. Co. v. Kentucky, 115 U. S., 321, 325, 29 L. Ed., 414, 418 (supra)*, the Court, passing upon the question of due process, said:

> "But whatever relief courts of justice may afford against the injuries apprehended,

> when, in fact, they have resulted, is secured to the plaintiffs in error by the very statute of which they complain. For the valuation of railroad property, under that Act, and the assessment of the taxes thereon, are not final, in the sense that they constitute a charge upon the property subject to the tax, or a liability fixed upon the corporation owning it. That result can be attained, and the tax actually collected, only by suit, as provided in the fifth section of the statute, either against the officers of the companies for penalties incurred by a failure to pay the taxes levied, or for the recovery of the taxes themselves, by action in the Franklin Circuit Court, or in the courts having jurisdiction in the counties, for the taxes payable to them respectively. The case is thus brought directly and distinctly within the decision in Davidson v. New Orleans * * *."

It is our position in this case that the Constitution and Statutes of Louisiana grant to a party in interest ample opportunity to appear before the Court and contest the validity of any and all proceedings leading up to the creation of a District, the incurring of debt, the issuance of bonds, and the levying of taxes, prior to the final levy and imposition of the taxes; that these provisions of our law afford due process of law; and that in this case, plaintiff was afforded due process of law, and now has no right to complain.

It is written into the Constitution of Louisiana (1921) that when a Road or other taxing District is

created, and an election is held at which bonds are authorized to be issued and taxes levied to pay same, that

> "For a period of Sixty (60) days from the date of promulgation of the result of any election held under the provisions of this section, any person in interest shall have the right to contest the legality of such election, the bond issue provided for, or the tax authorized, *for any cause;* after which time no one shall have any cause or right of action to contest the regularity, formality, or legality of said election, tax provision, or bond authorization, for any cause whatsoever. If the validity of any election, special tax or bond issue authorized or provided for, held under the provisions of this section, is not raised within the sixty (60) days herein prescribed, the authority to issue the bonds, the legality thereof and of the taxes necessary to pay the same shall be conclusively presumed, and no court shall have authority to inquire into such matters."
>
> *Paragraph (n), Sec. 14, Art. XIV, Const. 1921.*

Section 43 of Act 46 of 1921, the act providing the machinery for the holding of elections, the issuance of bonds and the levying of taxes to pay same, also specifically provides:

> "For a period of sixty days from the date of the promulgation of the result of any election held under the provisions of this act, any person in interest shall have the right to

contest the legality thereof, the bond issue provided for, or the tax authorized *for any cause;* after which time, no one shall have any cause or right of action to contest the legality, formality or regularity of said election tax provision or bond authorization, for any cause whatsoever.

"If the validity of any election, special tax or bond issue authorized or provided for under the provisions of this act be not raised within the sixty days herein prescribed, the authority to issue the bonds, the regularity thereof, and of the taxes necessary to pay the same, shall be conclusively presumed, and no court shall have the authority to inquire into such matters."

Act 118 of 1921 (Sec. 11), in providing for the creation of Consolidated Road Districts and the holding of elections therein at which the qualified taxpaying electors vote to incur debt and issue bonds, requires that this

"election shall be called, proclaimed, held, and promulgated in all particulars as near as may be in the manner prescribed by the general laws in relation to incurring debt and issuing bonds * * *."

These statutes have been given thorough consideration by the Louisiana Supreme Court, and they have been, for all practical purposes, held to be statutes of repose or pre-emption, and it is now settled by repeated decisions of that Court that during the sixty-day period an action may be instituted by a party in

interest, but that subsequent to that period of time all actions are barred.

The leading case on this question in the State jurisprudence is that of *Roberts v. Evangeline Parish School Board, 155 La. Rep., 331.* In that case, the legality and constitutionality of the formation of a school district and bonds issued and taxes levied by it, were called in question. The sixty days' constitutional and statutory prescription was pleaded. The plea was sustained, the Court saying:

> "The Constitution therefore declares in plain terms that after 60 days the bonds and taxes shall be conclusively held to be valid, that no one shall have the right to question their validity, that no court shall have authority to entertain any controversy over their validity.
>
> "And it seems to us that language could not be used to express more strongly the very patent intention of the Constitutional Convention, to-wit, that after *60 days have elapsed without any attack upon a bond issue and tax voted by property tax payers under color of law, any person may safely purchase such bonds and feel secure that the taxes* levied to pay them will be sustained by the Courts of this State. *The constitutional convention had the right to say this; it did say it, and that is the end of the matter.*" (Italics ours).

In a later case, *Hardin v. Police Jury of Vernon Parish (supra, p. 39)*, the rule was applied in a case

where the legality of the creation of a Consolidated Road District was called in question. The Court in that case said:

> "From all of this, it will be seen that the apparent purpose was, after the expiration of sixty days from the promulgation of the result of such bond elections, *to remove from doubt the validity of all bonds authorized under this section of the Constitution and the laws carrying it into effect.* Of course, as heretofore pointed out in the case of ..... v. ..... there must be at least a color of right in the authority which conducts the proceedings for holding the election and issuing the bonds. Certainly there would be no such color of authority in the 'village barber' or other agencies, which, in extreme illustrations, have been suggested in other cases. *The police jury was the proper agency to create the district and to submit the question of issuing bonds and voting taxes to the taxpayers; it did create a district with well-defined limits and submitted the matter to those entitled to vote, and the latter, by considerable majority, approved the proposition and, in these circumstances, no one can be heard to complain of anything which would have the effect of impairing 'the legality of the election, the bond issue provided for, or the tax authorized for any cause,' but '* * * the authority to issue the bonds, the legality thereof, and the taxes necessary to pay the same' are 'conclusively presumed.'*

"Where the subdivision purporting to act has jurisdiction, and there is an apparent purpose to proceed under the provisions of the Constitution and laws putting it into effect, *no omission to comply with the literal terms of either can be urged to nullify the result after the running of the period of repose fixed by the Constitution itself.*

"Whatever may be said about there being a distinction, as to the prescriptive period, between proceedings for the creation of a district and those for holding the election therein after its creation for the issuance of bonds and voting taxes, the argument is met by the inexorable *fact that an attack upon either, after the lapsing of that time, amounts to an assault upon the bonds themselves, as well as the taxes for their payment, a thing which the organic law, in plain terms, says shall not be done.*" (Italics ours).

These decisions have been reaffirmed by the Supreme Court of Louisiana in the cases of

Brock v. Police Jury, 159 La. Rep., 66.
Fontenot v. Miller Gravity Drainage District, 159 La. Rep., 302.
Chiara v. Lafourche-Terrebonne Dr. Dist., 159 La. Rep., 422.
Henderson Land & Plant. Co. v. Police Jury, 159 La. Rep., 733.

It certainly cannot be successfully argued that the imposition of the tax becomes final prior to the expiration of the 60 days, for the language of the Con-

stitution and statutes is so very clear that it readily appears from the reading of those provisions that the effect of the levy is held in abeyance.

The construction given a similar statute of limitations, Act 256 of 1910 and Act 317 of 1910, by the Supreme Court of Louisiana in the case of *Coguenhem v. Avoca Drainage District, 130 La., 323, 330,* settles any question as to whether the levy does remain in abeyance. In that case the Court, in referring to the 60-day prescription appearing in those statutes, said:

> "As an effect of this provision, the levy remains in abeyance or suspense for 60 days after notice by publication, in order to afford the tax owner an opportunity to be heard. This, we think, clearly satisfies the requirement of due process of law. Lent v. Tillson, 140 U. S., 316, 11 Sup. Ct., 825, 35 L. Ed., 419."

From these constitutional and statutory provisions and the interpretation given them by the Supreme Court of Louisiana, it will be seen that for a period of 60 days subsequent to the promulgation of the election at which a debt is authorized to be incurred and taxes to pay same authorized to be levied and imposed, any party at interest may attack the validity of the proceedings *for any cause.* After that time, however, the right to institute such a proceeding is barred. This right of attack, "for any cause," means, of course, exactly what that language usually means, that is, that the complainant may assert any ground of illegality, which would include an attack based upon the provision of the Constitution of the

United States. In this connection the language used by this Court in the case of *Cincinnati, N. O. & T. P. R. R. v. Kentucky (Kentucky Railway case), 115 U. S., 321, 336, 29 L. Ed., 414, 418,* is very pertinent:

> "What inquiries may be permitted in such cases, of course, is a matter that depends upon the particular provisions of the law of the jurisdiction. In the absence of such provisions, and as a principle of general jurisprudence, it is safe to say that any defense is admissible which establishes the illegality of the proceeding, resulting in the alleged assessment, whether because it is in violation of the local law which is relied on as conferring the authority upon which it is based, or because it constitutes a denial of a right secured to the party complaining, *by the Constitution of the United States.* The judgments now under review were rendered in just such actions, so that we cannot escape the conclusion that there is no ground for the plaintiffs in error to contend that they have been rendered without due process of law." (Italics ours).

Should there be any doubt as to whether the legality or constitutionality of the formation of the District itself may be called in question in such a proceeding, that doubt is removed when you consider the construction given the Constitution and Statutes by the State Court. In the case of *Roberts v. Evangeline Parish School Board (supra, p. 54)*, the Court specifically stated that the plaintiff attacked the constitutionality

of the statute under which the school district was organized. This would, of course, strike at the very foundation of the organization of the District. In the case of *Hardin v. Police Jury of Vernon Parish (supra, p. 39)*, it will be seen from the statement of the case by the Court that the organization of the District itself was attacked. In that case the Court specifically stated the issues presented to be:

> "The question before the court is simple. Does the 60-day prescription cure *every illegality, every defect* in connection with a political subdivision, or does it cure only the defects specifically provided for in the law?
>
> "In this case, the petition attacks the very existence of the road district. It alleges that the district was never created either as a consolidated road district or as an ordinary road district; it alleges specifically that in creating the district the police jury did not:
>
> "(1) Give notice of intention to create.
>
> "(2) Publish the ordinance creating the district for 10 days.
>
> "(3) Wait 10 days after publication before calling the election.
>
> "(4) Pass an ordinance specifying the existing road districts, their debts, etc.
>
> "In short the petition alleges that there was an omission of every requirement contained in Act 118 of 1921."

In each of these cases the Court held that the 60-day prescription or preemption barred an inquiry as to the constitutionality or validity of the organization of the Districts. Then, clearly, under the construction of the statute by the Supreme Court of Louisiana, the Federal question may be presented, but that question, as well as others, must be raised within the 60-day period provided by the statute.

Counsel for plaintiff in error refer your Honors to the case of *Shautin v. Board of Commissioners of St. Landry and St. Martin Drainage District No. 1, 160 La., 1036*, and under the authority of that case they claim that the 60-day prescription does not apply to the case at bar, for the reason, as counsel contend, plaintiff in error seeks to annul the formation of the District and not the tax, and that the 60-day prescription does not apply to an attack upon the constitutionality or legality of the creation of the District itself.

An examination of that case will disclose the fact that the plaintiffs therein simply sought to have declared illegal the formation of a drainage district. No effort was made to question the validity of the bond issue or the tax voted in that District. The Court concluded that under the language of the Constitution, as the validity or legality of the bond issue and tax was not called in question, the 60-day prescription did not apply and would not bar a suit directed simply and solely at the legality of the District. The Court, however, expressly decided in that case that it was not necessary to pass upon whether prescription would

have applied had an effort been made to have the tax declared null and void. The language of the Court on this question is very clear:

> "The plaintiffs have a right to select their cause of action, and must stand or fall on the cause of action as presented.
>
> "The prescription provided in the statutes to which we have referred, except that provided in Section 2 of Act 238 of 1924, only applies to causes of action which have for their purpose the setting aside of a tax election, a tax levy, or a bond issue, and this is made manifest by the fact that the limitation of such actions begins to run, either from the date of the publication of the ordinance authorizing the bond issue or tax levy, or from the promulgation of the result of the election.
>
> "There is nothing in any of the statutes, except that of 1924, which precludes a party from attacking the ordinance creating a drainage district at any time, *where such attack does not involve the legality or regularity of a tax levy, a bond issue, or an election authorizing the same.*
>
> "After a tax has been levied or a bond issue authorized by an election, *all grounds of attack for any cause after 60 days are closed against the taxpayer, even the right to attack the ordinance creating the district and the power and authority of the Board to levy the tax or issue the bonds under the election.*

"Our conclusion is that, inasmuch as the plaintiffs have limited their cause of action to an attack on the original ordinance creating the district, and have not made any attack on any tax, bond issue, or election held thereunder, the plea of prescription of 60 days is not applicable.

"Nor is the constitutional limitation of 60 days pertinent, for the reason that such limitation in express words only applies to elections held and taxes levied and bonds issued under and by virtue of the Constitution of 1921 and the laws passed in pursuance thereof.

"It will be time enough to consider and determine that question when an attack is made on the election, tax levy and bond issue had under the reorganized district." (Italics ours).

In the case at bar, the plaintiff does seek to have declared illegal and void and to enjoin the payment of the tax levied by the Consolidated Road District, the avails of which are to be used for the payment of the bonds. The language of the prayer of its bill of complaint is conclusive:

"The premises considered, your complainant prays * * * that a temporary restraining order be granted to your complainant restraining the said Tax Collector and the said Road District *from levying, assessing or attempting to collect the said road taxes for the year 1926*, based upon the as-

sessment against its property, and that of the said Shreveport Bridge & Terminal Company in said District and upon a final hearing thereon, that *the action of the said Road District in making the assessment against its property*, and that of the Shreveport Bridge & Terminal Company, within said District be declared illegal and void and *that such assessment be set aside as in violation of due process of law*, or for the reasons hereinbefore set forth, and that a writ of injunction issue directed to the said J. H. Nattin, Tax Collector and to the said Consolidated Road District of Bossier Parish, Louisiana, enjoining and restraining them and each of them *from levying or assessing any special tax or assessment* against the property of your complainant and that of the Shreveport Bridge & Terminal Company and for such other general relief as the complainant may, in good conscience be entitled to under the foregoing facts and law and for all of which it shall ever pray." (Rec., p. 10).

Thus it will be seen that the plaintiff in error *does call in question the validity of the tax.* Such being the case, the rule announced in the *Shautin* case finds no application, and the case at bar falls squarely under the provisions of the Constitution and Laws of Louisiana, as interpreted by our Court in the *Roberts* and *Hardin* cases, with the result that the right of action asserted is one which preempts within the sixty-day period of limitation.

Then the only questions which remain for consideration is whether the time allowed within which to file to contest and the character of the notice are reasonable. That sixty days is a reasonable time is now settled.

In the case of *Lent v. Tillson, 140 U. S., 318, 328, 35 L. Ed., 419, 425,* this Court considered a California statute requiring notice by publication for a period of 30 days, during which time persons complaining might resort to the Courts. It was held:

> "The notice by publication to all who owned property liable to be assesed for the cost of that improvement *was appropriate to the nature of the case* and was reasonable in respect to the length of time prescribed for the publication. And ample opportunity was given to all persons interested to test in a court of competent jurisdiction, the fairness and legality of any assessment proposed to be made upon their property for the purposes indicated by the statute." (Italics ours).

In *Campbell v. Olney, 263 U. S., 352, 67 L. Ed., 1021,* twenty days' notice was deemed sufficient, the Court saying:

> "Plaintiff in error had opportunity to be heard before the City Council and was allowed a reasonable time after the assessment to bring suit to set it aside or to correct it, or any proceedings with reference thereto. He failed to avail himself of the right so given him by the state laws. Their

validity was not drawn in question. His claim that he was denied due process of law is not even colorable."

In *Hagar v. Reclamation District No. 108, 111 U. S., 701, 28 L. Ed., 569, 572*, the Court, in referring to the time allowed for filing of protests, said:

"The law in prescribing time when such complaints will be heard gives all the notice required, and the proceeding by which the valuation is determined, though it may be followed, if the tax is not paid, by a sale of the delinquent's property, is due process of law."

It is equally clear that notice *by publication* is sufficient. The case of *Lent v. Tillson, 140 U. S., 318, 328, 35 Law Ed., 419, 425*, is direct authority for this proposition:

"The notice *by publication* to all who own property liable to be assessed for the cost of that improvement was appropriate to the nature of the case and was reasonable in respect to the length of time prescribed for the publication." (Italics ours).

In *Merchants & Manufacturers National Bank v. Pennsylvania, 167 U. S., 461; 42 Law Ed., 236, 238*, it was stated:

"It is true that the statute contemplates no personal notice to the shareholder, but that has never been considered as essential to due process in respect to taxation."

And in *Davidson v. New Orleans, 96 U. S., 97, 24 L. Ed., 616*, it was said:

> "Whenever by the laws of a state, or by state authority, a tax, assessment, servitude or other burden is imposed upon property for public use, whether to be of the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceedings in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

See also:

Paulson v. Portland, 149 U. S., 29, 37 L. Ed., 637.
Londoner v. Denver, 210 U. S., 377, 52 L. Ed., 1112.
Hagar v. Reclamation District No. 108, 111 U. S., 701, 28 L. Ed., 569, 572.

Then it having been established that an opportunity to be heard was afforded plaintiff in error for a period of sixty days subsequent to the promulgation of the election, and that it failed to take advantage of the opportunity, the situation now is that the State statutes of limitations are applicable and bar the inquiry into the legality of this tax. The plaintiff in error has enjoyed full and free opportunity to be heard.

It has slept upon its rights. There has been no deprivation of its property without due process of law, and the Fourteenth Amendment finds no application here.

B.

HIGHWAYS A COMPETING SYSTEM.

The above argument applies to the alleged unconstitutionality of the tax on the ground that the highway is a competing system, for in the last analysis, this allegation amounts to claim of want of benefits. For the reasons above urged, we respectfully submit that this question should not be considered by the Court as an independent ground of attack.

Should your Honors conclude to give consideration to this complaint, and consider the merits of the contention, we then submit that the imposition of a tax of this character for the construction of highways does not constitute a taking of property without due process of law. A recent decision of this Court, rendered in the case of *Branson v. Bush, 251 U. S., 182, 64 Law Ed., 215, 221,* is conclusive on this question.

In that case the Court considered the validity of a tax levied by Crawford County Road Improvement District No. 2 of the State of Arkansas, and held that for the purposes of the assessment the value of franchises of the railroad company might be taxed for road purposes. For the convenience of the Court we quote at length from this opinion:

> "Where in laws creating road districts for local improvements and taxation there is such a legislative declaration as this, as to

what lands within the district will be benefited by the improvement, the law with respect to the extent to which such determination may be reviewed by the courts is so well settled, and has so lately been re-examined and restated by this court, that extended discussion of the subject is not justified.

"In Spencer v. Merchant, 125 U. S. 345, 31 L. Ed., 763, 8 Sup. Ct. Rep., 921, * * * a decision often cited and approved * * * it is decided that if the proposed improvement is one which the state had authority to make and pay for by assessments on property benefited, the legislature, in the exercise of the taxing power, has authority to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement, are in fact benefited by it; and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard on the question whether their lands have been benefited or not.

"The subject was carefully re-examined and the law restated in cases so recent as Philip Wagner v. Leser, 239 U. S. 207, 60 L. Ed. 230, 36 Sup. Ct. Rep. 66, and Houck v. Little River Drainage District, 239 U. S. 254, 60 L. Ed. 266, 36 Sup. Ct. Rep. 58, with the result that the rule as we have stated it was approved, with the qualification, which was before implied, that the legislative determination can be assailed under the 14th

Amendment only where the legislative action is 'arbitrary, wholly unwarranted,' 'a flagrant abuse, and by reason of its arbitrary character a confiscation of particular property.' And see Withnell v. Ruecking Constr. Co., 249 U. S. 63, 69, 63 L. Ed. 479, 39 Sup. Ct. Rep. 200; Hancock v. Muskogee, 250 U. S. 454, 457, 63 L. Ed. 1081, 1083, 39 Sup. Ct. Rep. 528; Embree v. Kansas City and L. B. Road Dist. 240 U. S. 242, 250, 60 L. Ed. 624, 628, 36 Sup. Ct. Rep. 317.

"The decisions relied upon by the Company (Norwood v. Baker, 172 U. S. 269, 43 L. Ed. 443, 19 Sup. Ct. Rep. 187, Myles Salt Co. v. Iberia & St. M. Drainage District, 239 U. S. 478, 60 L. Ed. 392, L. R. A. 1918E, 190, 36 Sup. Ct. Rep. 204; Gast Realty & Investment Co. v. Schneider Granite Co., 240 U. S. 55, 60 L. Ed. 523, 36 Sup. Ct. Rep. 254) are not in conflict with the rule, but plainly fall within, and are illustrations of, the qualification of it.

"An application of this rule to the case before us renders not so difficult the decision of the second assignment of error.

"The road to be improved was 'a little less than 3½ miles in length,' and extended from Alma, a considerable village, on the north, southerly to an east and west road which had its western terminus at the city of Van Buren, 8 miles west of the junction of the two roads. It was the principal road to and from Alma, the travel on it being

greater than on all the other roads which served that village combined. In wet seasons the road was practically impassable for wagons, sometimes for three or four months together. People living south of the east and west road, who made Van Buren their trading point in wet weather, after the road was improved traded exclusively at Alma, it being 4½ miles nearer for many of them. The railway of the appellee was the only one at Alma, but at Van Buren there was a competing road with a line of 250 miles shorter than that of the appellee to St. Louis, the chief market for the staples of the region.

"On the question of benefits which would come to the railroad property from the construction of the road, the appellee receiver called four witnesses, three of them engineers and one a superintendent of the company. Two of these were familiar with the location of the road and the other two testified that they knew of its location in a general way. All four testified in general terms that the road was not and never would be of any benefit to the railroad. It is significant that no traffic man was called, and that no evidence was introduced showing the extent of business done at Alma before and after the improvement of the road.

"For the District, three witnesses were called, one a doctor, one a merchant, and one a long-time resident of the village of Alma. Each of these testified that, in his opinion,

the road, by making the village of Alma more accessible, particularly in the wet seasons of the year, and by developing the adjacent country, would increase the business of the railway company, and would divert business from Van Buren, where there was a competing railroad, to Alma, where appellee had the only line. It was in evidence also that after the act was passed, but before the road was completed, a large gas-producing district was discovered not far south of the southern terminus of the improved road, which was tributary to it.

"To this must be added the obvious fact that anything that develops the territory which a railroad serves must necessarily be of benefit to it, and that no agency for such development equals that of good roads.

"This discussion of the record makes it clear that it is impossible to characterize as arbitrary, capricious, or confiscatory the action of the general assembly in declaring that the property of the railroad company within the District would be benefited by the construction of the contemplated road improvement, but, on the contrary, it makes it apparent that the case is one so fully within the general rule that the holding of the circuit court of appeals that the railroad would no be benefited by the improvement cannot be sustained."

From an examination of the affidavits submitted in this case it will be seen that Messrs. McDade, Tay-

lor, Nattin and Whittington, all public officials of the Parish of Bossier, state that the building of these roads will, in fact, improve conditions in the parish and will increase the traffic of the railroad. (Rec., pp. 70, 72). You have, therefore, practically the same situation before you in this case as was presented in the *Branson-Bush* case, and we submit that, as the Court stated in that case, it is obvious that the building of these roads, which will provide practically a complete system in the parish, will be of benefit to all property in the District.

We particularly ask that your Honors note that the plaintiff in error nowhere alleges arbitrary abuse or fraud on the part of the officials, and without such an allegation this Court has held that it will not inquire into the validity of the assessment.

A quotation from a decision of the Supreme Court of the United States in the case of *Kansas City Southern Railway Company v. Road Improvement District No. 3, 266 U. S., 379, 69 Law Ed., 334, 341*, states clearly the correct doctrine:

> "By a long list of decisions in this court it has been settled that, where the state Constitution, as construed by the state Court of last resort, does not provide otherwise, the legislature of a state may require that the cost of a local public improvement, such as the construction or reconstruction of a public road, be distributed over the lands particularly benefitted, and charged against them

according to their value, their area, or the benefits which they will receive; may itself determine what lands will be benefited and in what proportions they will share in the benefits; and may avail itself, for the purposes of that determination, of any information which it deems appropriate and sufficient, including such as may be afforded by reports and estimates made in prior assessment proceedings having the same object. Only where the legislative determination is palpably arbitrary, and therefore a plain abuse of power can it be said to offend the due process of law clause of the 14th Amendment. Spencer v. Merchant, 125 U. S. 345, 355-357, 31 Law Ed. 763, 767, 768, 8 Sup. Ct. Rep. 921; French v. Barber Asphalt Paving Co., 181 U. S. 324, 338, *et seq.*, *45 L. Ed. 879*, *887*, *21* Sup. Ct. Rep. 625; Houck v. Little River Drainage District, 239 U. S. 254, 262, 265, 60 Law Ed. 266, 273, 274, 36 Sup. Ct. Rep. 58; Myles Salt Co. v. Iberia & St. Mary Drainage District, 239 U. S. 478, 481, 60 L. Ed. 392, 394, L. R. A. 1918E, 190, 36 Sup. Ct. Rep. 204; Branson v. Bush, 251 U. S. 182, 189, 64 L. Ed. 215, 220, 40 Sup. Ct. Rep. 113; Valley Farms Co. v. Westchester County, 261 U. S. 155, 163, 67 L. Ed. 585, 590, 43 Sup. Ct. Rep. 261. And only where there is manifest and unreasonable discrimination in fixing the benefits which the several parcels will receive can the Legislative determination be said to contravene the equal protection clause of that amendment. Kansas City Southern

R. Co. v. Road Improvement Dist., 256 U. S. 658, 65 L. Ed. 1151, 41 Sup. Ct. Rep. 604; Thomas v. Kansas City Southern R. Co., 261, U. S. 481, 67 L. Ed. 758, 43 Sup. Ct. Rep. 440.

"To justify an assessment of benefits to particular lands it is not essential that the benefits be direct or immediate (Valley Farms Co. v. Westchester County, *supra);* but it is esential that they have a better basis than mere speculation or conjecture (Kansas City Southern R. Co. v. Road Improvement District, *supra).* In the case of railway property they may consist of gains from increased traffic, reasonably expected to result from the improvement. Thomas v. Kansas City Southern R. Co. *supra;* Branson v. Bush, 251 U. S. 182, 189, 64 L. Ed. 215, 220, 40 Sup. Ct. Rep. 113."

See also:

Missouri-Pacific Ry. v. Western Crawford Road Improvement Dist., 266 U. S., 187; 69 Law Ed. 237.

Mount St. Mary Cemetery Association v. Mullins, 248 U. S., 501; 63 Law Ed., 383.

We respectfully submit that, even if your Honors consider the merits of the plaintiff's case, the plaintiff is not entitled to the relief which it seeks as it has failed to show taxation without benefits.

C.

INEQUALITY OF ASSESSMENT.

When you come to consider the charge made by the plaintiff in error that its railroad is assessed at cash valuation, whereas the property of other taxpayers in the District is assessed at less than cash valuation, and therefore it is being discriminated against unjustly, we first point out to the Court that in the bill of complaint (Rec., p. 6) this is alleged to constitute a deprivation of property without due process of law. Section 1 of the 14th Amendment to the Constitution of the United States is referred to and inequality is alleged, and it, therefore, may be that plaintiff in error intended to allege that it was being deprived of the equal protection of the law.

We submit that plaintiff in error's pleadings are not sufficiently definite to bring it within the claim of a deprivation of the equal protection of the law, and that for this reason your Honors should not consider this question.

Should your Honors, however, conclude that the pleadings are sufficiently broad to embrace a claim of deprivation of the equal protection of the law, we then submit that the claim of such deprivation is fully answered by the opinion of this Court rendered in the case of *Cincinnati N. O. T. & P. R. R. Co. v. Kentucky, 115 U. S., 321, 324, 29 Law Ed., 414, 416.* In that case assessments of railroad properties had been made by the Board of Railroad Commissioners of Kentucky. The statute required the railroad companies to return under oath to the Auditor of Public Accounts, a state-

ment showing the physical properties of the railroads in the State and their average values. The Board of Railroad Commissioners were then required to fix the valuations for assessment purposes. The Board kept a record of all proceedings. It was claimed that the assessment of railroad property was higher than that of individuals, which denied the equal protection of the law. This Court, however, said:

> "The discrimination against railroad companies and their property, which is the subject of complaint as being unjust and unconstitutional, arises from the fact that, in the legislation of Kentucky on the subject, railroad property, though called real estate, is classed by itself as distinct from other real estate, such as farms and city lots, and subjected to different means and methods for ascertaining their value for purposes of taxation, and differing as well from those applied to the property of corporations chartered for other purposes, such as bridge, mining, street railway, manufacturing, gas and water companies. These latter report to the auditor the total cash value of their property, and pay into the treasury as a tax, upon each one hundred dollars of its value, a sum equal to the tax collected upon the same value of real estate; and their reports and valuations are treated as complete and perfect assessments, not subject to revision by any board or court, and conclusive upon the taxing officers.
>
> "But there is nothing in the Constitution of Kentucky that requires taxes to be

levied by a uniform method, upon all descriptions of property. The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by different methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. There is no objection, therefore, to the discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect which the discretion of the Legislature has seen fit to impose. * * *

"We have already decided that the mode of valuing railroad property for taxation under this statute is due process of law. That being so, the provision securing the equal protection of the laws does not require, in any case, an appeal, although it may be allowed in respect to other persons differently situated. This was expressly decided by this court in the case of Missouri v. Lewis, 101 U. S. 22, 30 (Bk. 25 L. Ed. 989, 992). It was there said by Mr. Justice Bradley, delivering the opinion of the court and speaking to this point, that 'the last restriction, as to the equal protection of the laws, is not violated

by any diversity in the jurisdiction of the several courts, as to subject matter, amount or finality of decision, if all persons within the territorial limits of their respective jurisdictions have an equal right, in like cases and under like circumstances, to resort to them for redress.' The right to classify railroad property as a separate class for purposes of taxation grows out of the inherent nature of the property and the discretion vested by the Constitution of the State in its Legislature, and necessarily involves the right, on its part, to devise and carry into effect a distinct scheme, with different tribunals, in the proceeding to value it. If such a scheme is due process of law, the details in which it differs from the mode of valuing other descriptions and classes of property cannot be considered as a denial of the equal protection of the laws."

Further on this question, we respectfully point out to your Honors the following:

The general rule of law is:

"Equity will not assume jurisdiction to grant relief by injunction, or otherwise, in tax cases if there is an adequate remedy at law. * * * This rule applies equally well where the ground for enjoining an excessive assessment is that of fraud."

Cooley on Taxation, Vol. 4, Fourth Edition, p. 3323, Section 1646.

It is also the rule that:

> "While an excessive levy may be enjoined, yet for 'excessive assessments,' where fraud is not charged, there can, generally speaking, be no relief in equity. The remedy must be such as the statute has given. In other words, assessments cannot be disturbed by the courts unless fraudulent or illegal, and alleged overvaluation, where not so excessive as to be constructively fraudulent, and where there is no actual fraud but instead merely an honest mistake of judgment, cannot be corrected by a court of equity. Valuation will not be interfered with unless so grossly excessive as to be inconsistent with an exercise of honest judgment, or so unequal and discriminating as to violate the fundamental law of the land. This applies not only to valuation by an asessor but also to any valuation made by a state board or change of valuation by a board of equalization."
>
> *Id. Page 3337, Section 1650.*

The above rule of law has been approved by the Supreme Court of the United States in the case of *Chicago, Burlington & Quincy Railway Co. v. Babcock, 204 U. S., 585; 51 L. Ed., 636,* where is was stated (syllabus):

> "A federal court will not enjoin the collection of state taxes on railroad property because of undervaluation of other taxable property in the state, where such inequality

is not the result of a scheme or agreement among the taxing officials."

See also *Union Pacific v. Christensen, 275 Fed., 6*, where it was said:

> "To set aside a discriminatory assessment for taxes it must appear that the discrimination in favor of one class of property, or other classes as against others, was intentional and systematic."
>
> *Kelly v. City of Pittsburgh, 104 U. S., 78; 26 L. Ed., 658.*
>
> *Hazard v. O'Bannon, 38 Fed., p. 220.*
>
> *Lacey v. McCafferty, 215 Fed., 352.*
>
> *Puffer Manufacturing Co. v. Robertson, 248 Fed., 463.*

Then, in order that this plaintiff in error may set forth a cause of action to attack the assessment of its property, it must allege that this erroneous assessment was systematic and made with the idea of injuring it. This allegation is nowhere contained in the bill of complaint. The allegation merely is that complainant's property is assessed at practically its cash value, whereas the farm lands in the District "are assessed at a much lower rate, and thereby in any event discriminates against your complainant." (Rec., p. 6). Thus complainant has failed to allege that this action was the result of a scheme, or fraud, and until and unless it has made such allegations this Court may not hear the complaint.

Furthermore, plaintiff in error must, as a prerequisite to the launching of an action of this char-

acter, allege that it has sought redress at the hands of the proper state officials.

It is the rule that:

> "If there is a remedy provided by statute by appeal to a board of equalization, or other board, with power conferred on such board to correct the assessment in respect to the objection complained of, resort to such remedy is necessary before seeking relief by injunction. * * *. In case of an unjust assessment a court ordinarily cannot intervene before exhaustion of the remedy before statutory boards of review."
>
> *Cooley on Taxation, Vol. 4, Fourth Ed., pp. 3329-30, Sec. 1648.*

In the case of *Altschul v. Giddings, 86 Fed. Rep., 200*, it was held by the Circuit Court of Oregon, that:

> "* * * a person who is aggrieved by the wrongful action of an assessor, in the valuation of his own or other property for taxation, cannot maintain a suit in equity to enjoin the collection of any portion of the tax resulting from such action unless he first seeks redress at the hands of the county board of equalization as provided by statute. Where the laws of a state create a tribunal for the correction and equalization of assessments, and confer upon such tribunal power to grant relief to aggrieved persons, it is for the Supreme Court of the state to determine whether the statutory remedy is exclusive or whether it is only cumulative, and its

action in that respect raises no federal question."

Dundee Manufacturing Co. v. Charlton, 32 Fed., p. 192.

The Legislature of Louisiana has created tribunals for the purpose of making assessments and equalizing them. Prior to 1916 the railroads in the State were assessed by the State Board of Appraisers, which Board assessed the property belonging to public service corporations, including railway corporations. *(Act 122 of 1900).* This Board was authorized to make and correct assessments and valuations of property belonging to these corporations. Such assessment was final unless reduced or changed by suit instituted before the 1st day of November of each year *(Section 7, as amended, of Act 70 of 1904).*

By *Act 211 of 1918* the Board of State Affairs, now the Louisiana Tax Commission, was vested with the power and authority theretofore exercised by the State Board of Appraisers, this Board being authorized (under *Section 10, as amended, of Act 211 of 1918)* to fix and equalize the value of all property for the purpose of assessing State taxes, and by *Act 120 of 1918* the Louisiana Tax Commission (then called the Board of State Affairs) was authorized to correct, or change, the assessment of any public service corporation, or other property, made directly by the Commission. That Board actually fixed the value of the railroad belonging to plaintiff in error, for assessment purposes in 1926, after a full hearing. (Rec., pp. 58-59).

The assessment of other property in the State is made by the Assessor, and before this assessment is made the taxpayer is required to make a return of the value of his property *(Section 14 of Act 170 of 1898)* and upon his failure so to do then the Assessor values the property. After the Assessor has made a list of the property to be assessed, and the valuation thereof, he gives notice by publication in a newspaper that the listing and valuation has been completed. *(Section 22 of Act 170 of 1898).*

The Legislature has also provided for the creation of the Parish Board of Equalization, which Board meets on the first Monday of May of each year, examines the assessments of property as fixed by the Assessors and equalizes the assessments. Taxpayers are authorized to appear before that Board. *(Act 231 of 1920).* After these rolls are completed they are then filed with the Louisiana Tax Commission by the Assessor and passed upon by the Tax Commission under the authority of *Section 10 of Act 222 of 1918*, and again the taxpayer has a hearing before the Commission. In addition to the above the Police Juries of the State are required to meet on the first Monday of June of each year for the purpose of sitting as a Board of Reviewers of assessments *(Act 194 of 1906)* and when they meet as a Board of Reviewers they are required:

> "To carefully examine and scrutinize the lists as prepared and filed by the Assessor, and to compare each individual item of assessment with the others, considering the value placed on same, and, after hearing evi-

dence concerning same, determine if said valuations are equitable and just and in accord with the requirements of the Constitution, and either approve or disapprove the said assessment list."

Further, any property taxpayer who may desire to protest the correctness of the valuation placed by the Assessor upon property owned by him may file such a protest. *(Section 24 of Act 170 of 1898, as amended by Act 63 of 1906).*

It is further the law of Louisiana that any taxpayer in the State, who has made a return, may institute a suit in Court for the purpose of protesting the correctness or legality of any assessment. *(Act 97 of 1924).*

Thus it will be seen that the State of Louisiana has provided the machinery for a hearing in matters of this kind, and has allowed the taxpayer thirty (30) days (under the provisions of *Act 97 of 1924)* subsequent to the filing of the rolls within which to resort to the Courts. If this plaintiff in error desired to urge any objection to these assessments, it should have appeared before these Boards and should have filed its suit within the time prescribed by the statute. Unless and until it had exhausted its remedy before the executive branch of the State, it has no standing in the Courts. Having failed to allege that it had so exhausted its remedy before the Boards, it has no standing in this Court to question the correctness of the assessment.

The District Court, in disposing of this issue, said:

> "(4) The assessment laws of the State afford taxpayers full opportunity to be heard upon the valuation and amount of their assessments. In fact, public service corporations like the complainant, are assessed, after full hearing if desired, by a state board known as the Louisiana Tax Commission, which presumably is not influenced by local conditions. For thirty days after the filing of the final assessment rolls the taxpayer is permitted to go into the Courts for the purpose of contesting his assessment and if not done within that time, then he is expressly precluded from doing so thereafter. Act 97 of 1924. We think this provision reasonable for the state is entitled to fix some time after which the right to collect taxes for its own alimony and that of its subdivisions will be set at rest, and unless the provision is (fol. 117) unreasonable, we see no reason why anyone should have a right to complain if they fail to avail themselves of that privilege. See authorities cited above." (Rec., p. 88).

In this conclusion that Court is supported by decisions of this Court, one of the latest being that of *Valley Farms Company v. Westchester County, 261 U. S., 155; 67 Law Ed., 585*, wherein the Court passed upon the validity of taxes levied for the purpose of constructing sewers, which taxes, as the Court stated, were "based wholly upon assessed valuation for general purposes. Each lot is taxed according to value

and irrespective of benefits received. No power is conferred to reduce assessments in one section not benefited equally with the others." The Court dismissed the complaint, stating:

> "The State Courts held that, as the rolls of local assessors are adopted for taxing property within the district, the right of owners to be heard as to values is adequately protected; and we think that, under the circumstances, they can demand no more."

The same situation is presented in this case. The assessed value of this property is fixed by a Board created for that purpose after a hearing. If plaintiff in error desired to contest the assessment it should have proceeded within the time allowed by law.

In an earlier case, that of *Hagar v. Reclamation District No. 108, 111 U. S., 701, 710; 28 L. Ed., 569, 572*, the Court, in speaking of the action of assessors in fixing valuations of property, said:

> "But where a tax is levied on property, not specifically but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they may obtain, a different principle comes in. The officers, in estimating the value, act judicially, and in most of the States provision is made for the correction of errors committed by them, through boards of revision or equalization, sitting at designated periods provided by law, to hear complaints respecting the justice of the assessments. The law in prescribing the time when such complaints will be heard,

gives all the notice required, and the proceeding by which the valuation is determined, though it may be followed, if the tax be not paid, by a sale of the delinquent's property, is due process of law."

It has also been said by this Court that:

"It has long been settled that the due process clause does not preclude a State from taxing the intangible property of a railroad, or from ascertaining its value, substantially in the manner prescribed by the statute herein assailed; that the equal protection clause is not violated by prescribing different rules of taxation for railroad companies than for concerns engaged in other lines of business."

Baker v. Druesedow, 163 U. S., 137; 68 Law Ed., 212, 214.

We respectfully submit that on the ground of disparity of assessment, the position of the plaintiff in error presents no meritorious ground for any equitable relief.

D.

BURDEN ON INTERSTATE COMMERCE.

We feel that a mere quotation from the opinion of the District Court in disposing of this contention is sufficient. That Court said, (Record page 89):

"We are of the opinion that the contention that the taxes in question imposed an undue burden on interstate commerce is without merit. The same argument could

with equal force be applied to any tax levied upon the physical property of a common carrier located within the State or within one of its taxing districts. Besides, both as to this question and the one immediately preceding, complainant has alleged its willingness to pay the ordinary state and parish taxes upon the basis of this same assessment and gives us its reason for not doing so the refusal of the tax collector to accept the same."

II.

ILLEGALITY UNDER THE STATE STATUTE.

On this branch of the case the plaintiff in error claims

A. That this District was created in violation of the State law in that practically the whole Parish was included therein; and

B. That in any event the rate of taxation is excessive and should be reduced to fixe mills.

A.

A sufficient answer to the first contention above urged is that the right to call in question the legality of the creation of the District on any ground is precluded by the sixty (60) day pre-emption or prescription provided for in paragraph (n) of Section 14 of Article XIV of the Constitution of 1921 and Section 43 of Act 46 of 1921. We have heretofore fully referred to those sections and to the decisions of our Court interpreting same (Brief, pages 51 to 63), and

feel that it is not again necessary to quote the provisions of those statutes of limitation or the language wherein the Court of Louisaina has expressly decided that the validity of the organization of a Consolidated Road District may be called in question after the sixty (60) days have expired from the date of the promulgation of the election. *Hardin v. Police Jury of Avoyelles Parish, 155 La., 899*, and other cases.

Clearly this construction given the State statute is binding upon this Court, and therefore the merits of this ground of attack may not be inquired into.

Should this Court, however, conclude to consider the question, we then call to the attention of your Honors, as the District Court has pointed out (R. p. 80) that an amendment was adopted to the Constitution of Lousiiana on November 4, 1924, wherein the language of the Constitution was changed, and that under the Constitution as it now exists, Road Districts may be created from the whole Parish. Therefore no question of public policy is involved, as the Constitution of Louisiana now recognizes the right of a police jury to create a Road District from the whole of the Parish.

While counsel for the plaintiff in error admits that the Constitution has been changed, they contend that the Legislature has the power to fix the terms and conditions upon which a Road District may be created, and that as under the Act 118 of 1921 it is expressly provided that no Consolidated Road District shall in-

clude the entire territory of a parish, the statute would control and not the constitutional provision. Our first answer is that the pleadings do not attack the formation of the District on the ground that it violates this statute, but on the ground that it violates the Constitution. (Rec., p. 5). Then the grounds of attack which may be argued are only those which are set forth in the bill of complaint, and as the bill of complaint does not specifically urge the objection that the creation of the District violates the statute, this contention of the complainant should not be considered by the Court.

Should the Court, however, desire to consider the question, then we point out further that the only inhibition in the statute is that: "No Consolidated Road District shall, however, comprise the entire territory of a Parish." Then, we submit, that as long as this Police Jury did not embrace the entire territory of the parish within this Consolidated Road District it did not violate the statute. There is no contention here that the Police Jury did embrace the entire territory of the Parish. As a matter of fact, about 25,000 acres of land were omitted from the District.

The evidence before this Court (Rec., pp. 51-52) shows that this District was created after a hearing and after published notice. Under such circumstances, will this Court, in the absence of proof of fraud, substitute its judgment for that of the Police Jury in determining what portion, or what proportion, of the Parish of Bossier should have been included in this

Consolidated Road District? We do not believe that your Honors will assume any such authority. The rule of law, as announced by the Supreme Court of the State of Louisiana, in construing the laws governing the formation of School Districts, in the case of *Burnham v. Police Jury of Claiborne Parish, 107 La., 513, 516*, is that:

> "* * * the matter of fixing the limits of school districts has been confided by the statute to the School Boards, and that the discretion thus confided cannot be controlled by the courts."

In the case of *Drouin v. Board of Directors of Public Schools, Parish of Avoyelles, 136 La., 393*, our Court has expressly held (syllabus):

> "The Board of Directors of Public Schools of several Parishes of the State of Louisaina are given full discretion to establish school districts in their respective Parishes and their action in establishing the boundaries of a school district will not be reviewed by the Courts where it is not shown that the discretion vested in the Board has been abused."

In this case the question of determining what lands should or should not be included in the District was one which the Police Jury was called upon to decide. The plaintiff's railroad was within two of the existing Road Districts, which were, of necessity, under the statute, to be incorporated in the Consoli-

dated Road District. The question for the Police Jury to decide was what additional territory was to be included in the District. The Police Jury passed upon that question and included the additional territory. It made no difference whether more or less additional territory was included in so far as concerns this complainant, for the property of this plaintiff was already in the two Road Districts which were to be consolidated, and even if no other territory had been included in the Consolidated Road District this complainant's road would have been in the District. Therefore, the plaintiff would not have been injured, regardless of the action of the Police Jury. This inclusion of more or less territory did not affect the taxes to be paid by plaintiff, for such additional territory will pay its proportion of the taxes and will have borne its proportion of the expenses. Therefore, the inclusion of this territory in the Consolidated Road District could not and did not injure this complainant, nor is this plaintiff actually claiming that the action of the Police Jury did, in fact, injure it.

Then, as the Police Jury was vested with the authority under the law to pass upon the question, and as it exercised that discretion, and especially as this plaintiff has not been injured by the manner in which it was exercised, but is relying simply and solely upon a technical ground, we respectfully submit that this Court should not substitute its judgment for that of the Police Jury (the authority vested by the Constitution of Louisiana with the power to pass upon this question) and hold that the action of the Police Jury was not in conformity with the law of Louisiana.

Your Honors should bear in mind that the plaintiff does not claim that this action deprives it of any right under the Constitution of the United States. It simply says that this act of the Police Jury did violence to the Constitution of Louisiana—your Honors are therefore called upon to construe the Constitution of Louisiana in passing upon this question and not the Constitution of the United States.

We submit as a further answer to the contention that the Constitution of Louisiana was violated, that the Court cannot consider in this proceeding this alleged invalidity for the reason that as presented, this is nothing more than a collateral attack upon the creation of the District. This may not be done in this proceeding where the tax only is sought to be enjoined. The Police Jury created this District. It is not before this Court. It is contended that this tax is illegal because the District was not properly created. The District is now actually operating. It has actually levied and collected taxes, and it is actually building roads. This plaintiff says the District is illegally created and therefore the tax should not be imposed, then, of necessity, in order to hold the tax to be illegal on this ground, your Honors must first determine that the district was improperly created. This calls in question the acts of the Police Jury of the Parish of Bossier, which body is not before the Court, and requires this Court to decree illegal its act in creating the District. This constitutes a collateral attack upon the District, which we submit should not be heard in a proceeding of this character.

B.

The District Court disposed of the contention that seven mills on the dollar for the year 1926 was an excessive levy, in the following manner:

> "It is shown that the bonds were all dated March 1st, 1926, and that the interest thereon was payable semi-annually on the first days of March and September of each year. Therefore, the first payment of interest had to be made on September 1, 1926, and the second on March 1, (fol. 109a) 1927. The Court will take cognizance of the fact that assessments of property in the State of Louisiana are made in the spring and summer of the year in which taxes are collected and that no collection of taxes is made until the rolls are filed in the fall. Hence it was not possible to levy and collect the taxes to pay at maturity the installment of interest falling due on March 1, 1927, upon the tax roll of that year. What the Police Jury did was to levy sufficient taxes upon the assessment of 1926 to pay the interest maturing September 1, 1926, and March 1, 1927. We do not believe that the language of the Constitution and of the statute, which are practically the same, providing that the 'Subdivisions shall impose and collect annually, in excess of all other taxes, a tax to pay the interest accruing annually or semi-annually, and the principal falling due each year', is susceptible of the construction that the money collected upon the rolls of a particular year must be

devoted solely to the payment of amounts maturing within that calendar year. Both the framers of the Constitution and the members of the Legislature, it must be assumed, were aware of the facts above related with respect to the assessment and collection of taxes and that circumstances might be such that the principal and interest, since the latter was expressly permitted to be made payable semi-annually, would mature just in the manner and at the time as were adopted in this instance, and that it would not be possible to timely collect on the assessment of any year the money to pay installments falling due from, say the first of January to the filing of the tax rolls. It is not contended, and as a matter of fact there has not been imposed a greater tax upon the assessment of the year 1926 than was sufficient to pay the principal and interest upon the bonds maturing (fol. 110) within the period of one year. In other words, the burden of the taxpayer for the year 1926 is no greater than if the interest had been payable annually and the levy of 1926 had been made to pay the interest maturing at the end of the year. There had to be a beginning and hereafter and until the bond issue is discharged the taxpayer will no doubt pay the princpial and interest as they become due." (Record Pages 81 and 82).

We feel that nothing can be added to this statement by the District Court.

We respectfully submit that the opinion and the decree of the three judges of the District Court are in all respects correct, and that the decree of that Court should be affirmed.

All of which is respectfully submitted.

MILLING, GODCHAUX, SAAL & MILLING,
A. M. WALLACE,
Solicitors for the Defendant in Error.

ROBERTS C. MILLING,
A. M. WALLACE,
R. E. MILLING, JR.,
Of Counsel.

February 20, 1928.

SUPREME COURT OF THE UNITED STATES.

No. 263.—October Term, 1927.

St. Louis & Southwestern Railway Company, Appellant, *vs.* J. H. Nattin, Tax Collector, Consolidated Road District of the Parish of Bossier, Louisiana.	Appeal from the District Court of the United States for the Western District of Louisiana.

[May 14, 1928.]

Mr Justice McReynolds delivered the opinion of the Court.

This cause was heard by a specially constituted District Court—three judges. Jud. Code, Secs. 238, 266. It dismissed the bill and directed that the costs, together with ten per cent damages, be assessed against appellant. The opinion of the court, considered with the argument here, so plainly demonstrates the lack of merit in the claims advanced that it is unnecessary for us to discuss them at length.

Appellant Company owns a line of railroad lying partly in Bossier Parish, Louisiana, also all stock of the corporate owner of the bridge over Red River at Bossier City. Purporting to proceed as directed by the state statute, the Police Jury of that Parish undertook to create from the major part of its territory a Consolidated Road District, to issue bonds thereof to pay for constructing a highway therein and to lay an ad valorem tax upon all property within the District to meet the obligation. It asked for an injunction prohibiting any attempt to collect the taxes levied and assessed for the year 1926. None of the alleged grounds for relief is substantial.

In Louisiana the police jury, subordinate to the State legislature, is the governing body of the parish. A statute of the State empowers these juries to create road districts from such portions of their parishes as they may determine and, with the approval of a popular vote, to construct roads and issue bonds to pay therefor.

The validity of this statute is challenged upon the ground that it fails to provide the taxpayer with proper opportunity to be heard. A sufficient short answer is that under the repeated decisions here this is not essential. *Valley Farms Co.* v. *Westchester County,* 261 U. S. 155, *Hancock* v. *Muskogee,* 250 U. S. 454. But here in fact the appellant had abundant opportunity to present objections to the proposed plan.

We find nothing in the Constitution of Louisiana, when reasonably construed, which inhibited the collection in 1926 of a tax partly intended to supply funds to meet installments of principal and interest upon bonds maturing in March, 1927.

As the assailed tax was general and ad valorem, its legality does not depend upon the receipt of any special benefit by the taxpayer.

The local statutes provided ample opportunity for the appellant to contest the valuation of its property for taxation purposes.

Without doubt a local legislative body, when properly authorized, may lay general ad valorem taxes upon all property within its jurisdiction, including that of common carriers engaged in interstate commerce, without violating the Federal Constitution. That such taxation does not amount to regulation of interstate commerce is settled doctrine.

The decree below is affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.